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**Ethics Commission**

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# SAN FRANCISCO ETHICS COMMISSION AGENDA
# and
# NOTICE OF MEETING
## FOR MONDAY, January 12, 1998, 5:00 P.M.
## 1390 MARKET STREET, MEZZANINE CONFERENCE ROOM 227

I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meeting of December 8, 1997**

IV. **Vice-Chairperson's Report**

V. **Commissioners' Reports**

VI. **Executive Director's Report**
**A. Advice and Opinions issued**
**B. Updates**
**C. Projects and Activities**

VII. **Discussion and Possible Action re: Adoption of enhanced standard filing formats for mandatory use by electronic campaign filers for all electronic filings received after 2/1/97 for Forms 419 (Ballot Measure Committee), 420 (Receipient Committee), and 490 (Candidate Committee).**

VIII. **Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance, S.F. Admin. Code sections 16.520 through 16.534, including but not limited to: adding legislative findings; clarifying definitions and adding new definitions; consolidating the definition of "lobbyist" with the thresholds for qualifying as a lobbyist and the exemptions; increasing the qualification thresholds for contract lobbyists from $1,000 to $3,500; increasing the qualification threshold for expenditure lobbyists from $1,000 to $5,000; clarifying and adding new exemptions; clarifying that once a person qualifies as a lobbyist the person is subject to the requirements and prohibitions of the Ordinance until the person ceases all lobbyist activity and files a statement of termination; requiring that lobbyists report contacts with and payments that benefit certain designated employees as well as City officers; clarifying the disclosure requirements applicable at the time of registration and at the time of filing quarterly activity reports; providing that all lobbyists re-register on January 15 of each year, rather than 15 days after the close of the calendar quarter that includes the anniversary of the date of initial registration; limiting the aggregate value of gifts from**

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lobbyists to each City and County officer and to certain designated employees to $10 per month; prohibiting lobbying on a contingency fee basis; requiring lobbyists to notify City and County officers and designated employees of the value of gifts conferred; limiting political contributions by lobbyists; and adding transition provisions for implementation of these amendments.

IX. Discussion and Possible Action re: Authorizing staff to conduct workshops for filers of Statements of Economic Interests during February and March 1998.

X. Discussion and Possible Action re: Authorizing staff to conduct workshops during the first week of March 1998 for filers of electronic campaign statements re: use of mandated standard electronic filing formats.

XI. Discussion and Possible Action re: Authorizing staff to conduct workshops for lobbyist filers in February and September 1998.

XII. Discussion and Possible Action re: Authorizing staff to conduct workshops for campaign consultant filers in May 1998.

XIII. Discussion and Possible Action re: Items for Future Agendas

XIV. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XV. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation

Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

XVI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.14 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XVII. Adjournment

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**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market St., Room 227**
**January 12, 1998; 5:00 p.m.**

**I. Call To Order and Roll Call.** Commissioner Melbostad called the meeting to order at 5:05 p.m. The following were present:

COMMISSIONERS PRESENT: Robert D. Dockendorff, Isabella H. Grant, Paul H. Melbostad, Henri E. Norris. Commission Vice-Chair Geoffrey Gordon-Creed was absent due to illness.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Shawn Allison, Campaign Finance Officer/Technical Assistant; Naomi Starkman, Investigator/Auditor.

OFFICE OF THE CITY ATTORNEY: Julie Moll, Deputy City Attorney

OTHERS PRESENT: Anita Mayo, Pillsbury Madison & Sutro; Ron Kane, DTIS; Robin Renaldi, Bay Guardian

MATERIALS DISTRIBUTED:
SF Ethics Commission Agenda, January 12, 1998
Approved Minutes of the SF Ethics Commission: Meeting of November 10, 1997
Draft Minutes of the SF Ethics Commission: December 8, 1997
Executive Director's Report, January 12, 1998
Whistleblower Hotline Tracking Chart, January 12, 1998
Letter from Executive Director Ginny Vida to Controller Edward Harrington, December 22, 1997
Supplemental Budget Proposal, revised December 22, 1997
Letter from Anthony DeLucchi to the Board of Supervisors authorizing an amendment to the existing lease of real property at 1390 Market Street for the Ethics Commission., December 11, 1997
Timetable for Commission Initiatives, revised January 9, 1998
Staff Report Re: Proposed Standard Electronic Filing Formats for Mandatory Use by Campaign Filers, January 9, 1998
Memo to Ethics Commissioners re: Recommendation re: Increased Monetary Thresholds for Contract Lobbyists and Expenditure Lobbyists (Formerly Grassroots Lobbyists), January 12, 1998
Proposed Amendments to the Lobbyist Ordinance, December 3, 1997
Memo from Deputy City Attorney Julie Moll to Ethics Commissioners re: Proposed Amendments to the Lobbyist Ordinance, December 3, 1997
Proposed Amendments to the Lobbyist Ordinance, December 3, 1997

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of December 8, 1997**

**Motion 98-01-12-1 (Grant/Norris) Moved, seconded and passed: That the minutes of the December 8, 1997 meeting be approved.**

**IV. Vice-Chairperson's Report**

Commissioner Melbostad noted that Vice-Chair Geoffrey Gordon-Creed would not be able to attend the meeting due to an illness, and that he had asked Commissioner Melbostad to chair the meeting in his stead. Commissioner Melbostad welcomed Peggy Ahn to the Commission. He stated that he had reviewed her resume and was very impressed by her credentials. Executive Director Ginny Vida stated that Ms. Ahn was selected from over 50 applicants for the position of Whistleblower/Educator. Prior to coming to the Commission, Ms. Ahn served as a staff attorney at the New York City Legal Aid Society. Ms. Ahn thanked Commissioner Melbostad for his comments and stated that she welcomed the opportunity to work with the Commission.

**V. Commissioners' Reports**

There were no reports from the Commissioners.

**VI. Executive Director's Report**
**A. Advice and Opinions issued**
**B. Updates**
**C. Projects and Activities**

Executive Director Ginny Vida stated that the Commission's Supplemental Budget was revised per discussions with the Mayor's Budget Office and Controller's Office and resubmitted on December 22, 1997. She noted that the Mayor's Office has approved all of the items on the Supplemental Budget and that it is on the Finance Committee's draft agenda for January 28 at 1 p.m. She encouraged Commissioners to attend the meeting.

Ms. Vida stated that she had received a letter from City Administrator Steve Nelson, the City's landlord, confirming that the Ethics Commission will not be relocated to City Hall. Mr. Nelson noted his office's "...general concern with respect to the public's perception of impartiality which might be jeopardized by the Commission's presence in City Hall."

Commissioner Melbostad asked Ms. Vida whether the Commission would be provided a hearing room at City Hall. Ms. Vida stated that she had discussed this matter with Tony Irons and that she would raise the possibility with Steve Nelson.

Ms. Vida advised that on January 7, staff met with Ron Kane from DTIS to explore the possibility of establishing electronic filing programs for lobbyists and campaign consultants. She noted that electronically filed statements would save considerable staff time in preparation of quarterly reports and would also facilitate auditing. Several lobbyists have expressed an interest in filing electronically. DTIS has agreed to present a bid for this project to the Commission by February 1.

Ms. Vida reported that on January 6, Judge Lawrence Karlton of the Federal District Court struck down major provisions of Prop 208 concerning campaign contributions. She said that staff would review this decision to identify possible implications for local law.

Commissioner Dockendorff commented that due to the current status of Prop 208, Senator Burton's legislation regarding the regulation of slate mailer organizations would go back into effect. He asked that the Commission revisit: 1) the issue of banning lobbyists from contributing to the officers whom they lobby, and 2) the issue of whether accrued expenditures will be deemed contributions if they are not paid after 30 days. It was agreed that these matters will be calendared for the Commission's February agenda.

Deputy City Attorney Julie Moll agreed to confirm the status of Senator Burton's legislation.

Commissioner Melbostad noted that the Commission should decide whether it will place an initiative on the ballot for the June election regarding any of the issues impacted by Prop 208. He asked for this matter to be calendared for the next meeting.

**VII. Discussion and Possible Action re: Adoption of enhanced standard filing formats for mandatory use by electronic campaign filers for all electronic filings received after 2/1/97 for Forms 419 (Ballot Measure Committee), 420 (Recipient Committee), and 490 (Candidate Committee).**

Ms. Vida reported that the Secretary of State has issued its proposed standard electronic filing format (Form 490) for trial use by state campaign filers. This format has been endorsed by the FPPC, the Franchise Tax Board's Political Audit Unit, the Los Angeles Ethics Commission and the San Diego Ethics Commission.

Commissioners Melbostad and Dockendorff commended DTIS and Campaign Finance Officer/Technical Assistant Shawn Allison for their outstanding work on the Commission's proposed standard electronic filing format.

Mr. Allison noted that the Commission's format is not as simple as first proposed. He stated that smaller organizations might have a more complex format because Form 490, used by candidate committees, has certain schedules (such as Schedule E) that must be reflected on other schedules. He said that one vendor, Statecraft, has developed software based on the Commission's format which it will sell for $100 to electronic filers with less than $10,000 in activity. Mr. Allison noted that a workshop has been scheduled in March to introduce electronic filers to the Commission's new format.

Ron Kane of DTIS stated that filers who choose not to buy the software would be able to download the format, including forms and instructions, from the Commission's website, and adapt it to their own spreadsheet program, such as Excel or Access.

**Motion 98-01-12-2 (Dockendorff/Grant) Moved, seconded and passed: The Ethics Commission approves the adoption of enhanced standard filing formats for mandatory use by electronic campaign filers for all electronic filings received after 2/1/97 for Forms 419 (Ballot Measure Committee), 420 (Recipient Committee), and 490 (Candidate Committee), and authorizes staff to make additional technical enhancements based on future revisions to be made by the Secretary of State.**

**VIII. Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance, S.F. Admin. Code sections 16.520 through 16.534, including but not limited to: adding legislative findings; clarifying definitions and adding new definitions; consolidating the definition of "lobbyist" with the thresholds for qualifying as a lobbyist and the exemptions; increasing the qualification thresholds for contract lobbyists from $1,000 to $3,500; increasing the qualification threshold for expenditure lobbyists from $1,000 to $5,000; clarifying and adding new exemptions; clarifying that once a person qualifies as a lobbyist the person is subject to the requirements and prohibitions of the Ordinance until the person ceases all lobbyist activity and files a statement of termination; requiring that lobbyists report contacts with and payments that benefit certain designated employees as well as City officers; clarifying the disclosure requirements applicable at the time of registration and at the time of filing quarterly activity reports; providing that all lobbyists re-register on January 15 of each year, rather than 15 days after the close of the calendar quarter that includes the anniversary of the date of initial registration; limiting the aggregate value of gifts from lobbyists to each City and County officer and to certain designated employees to $10 per month; prohibiting lobbying on a contingency fee basis; requiring lobbyists to notify City and County officers and designated employees of the value of gifts conferred; limiting political contributions by lobbyists; and adding transition provisions for implementation of these amendments.**

The Commission first discussed staff's memo regarding the recommendations to increase the qualification thresholds for contract and expenditure lobbyists to $4,200 per quarter. Ms. Vida explained that the staff's proposal to raise the threshold was prompted by the higher lobbyist fees recently approved by the Board of Supervisors ($300 annual registration and $50 per client). She said the proposal was intended to avoid imposing an undue financial burden on lobbyists who earn less than $4,200 in any quarter.

Investigator/Auditor Naomi Starkman noted that the Los Angeles Ethics Commission, which has the same registration fees, has a quarterly threshold of $4,000 for lobbyists. She stated that staff of the L.A. Commission informed her that Los Angeles was more interested in capturing the activities of higher-earning lobbyists than of low-earning lobbyists.

Commissioner Dockendorff stated that he agreed with staff's recommendation to amend the threshold period for contract lobbyists to reflect income received on a quarterly basis (as opposed to the current monthly basis). He expressed concern, however, that if the threshold were raised to $4,200 per quarter, some lobbyists would not be required to register and report their lobbying activities. Commissioner Dockendorff stated that the Commission and the public may have an interest in the activity of a lobbyist who might earn up to $16,000 and still not meet the proposed threshold, and who would therefore

not be required to register and report lobbyist activity. He stated that disclosure for that level of activity should be required, even if no fees are imposed on lobbyists who fall below the threshold.

Referring to staff's written proposal, Commissioner Melbostad noted that all of the lobbyists who would not meet the proposed threshold are powerful players in the governmental relations business who can afford the current lobbyist and client fees. He stated that there have been no complaints by lobbyists with respect to the $1,000 threshold since the fees were raised. He expressed concern that the Commission would be sending the wrong message by increasing the threshold for contract lobbyists.

Ms. Vida explained that the staff's proposed increase is based on the Consumer Price Index, in accordance with the Charter. She explained that based on the current threshold of $1,000 per month, a person might pay as much as 35 percent of his/her income as a contract lobbyist in registration and client fees. If the Commission decided to increase the threshold on a monthly basis to reflect the Consumer Price Index, a person might still pay as much as 21 percent of his/her income in registration fees. On a quarterly basis, a threshold increase based on the Consumer Price Index would mean that a person might pay a maximum of 7 percent of his/her annual lobbyist income in fees.

Commissioner Grant stated that she agreed with staff's recommendation to increase the threshold to reflect the Consumer Price Index.

After some discussion, the Commission decided to reconsider staff's recommendation at the Commission's next meeting.

The Commission then discussed the proposed amendments in the order that they appeared in the draft.

1. Section 16.522(d)(7)

Commissioner Melbostad noted that he is continuing to work on this section with the City Attorney's office.

2. Section 16.522(d)(8)

Anita Mayo of Pillsbury, Madison and Sutro requested that the lobbyist forms clarify when a client hires an officer or employee at the behest of the filer.

The Commission noted her request.

3. Section 16.522(d)(10)

Ms. Mayo objected to requiring lobbyists to disclose, in a registration statement or quarterly report, activities described in Section 16.521(P). Ms. Mayo had objected to this language previously and the Commission noted her comments.

4. Section 16.522(f)

Ms. Mayo stated that this proposed amendment, requiring lobbyists to file a client authorization statement prior to providing lobbying services on behalf of a client, is too burdensome. She recommended that the current 30-day requirement be retained.

Staff explained that the intent of this proposed section was to ensure that lobbyists are authorized to lobby on behalf of a particular client. Currently, many lobbyists are confused about when they should file the Form 3: Client Authorization Form.

Ms. Mayo noted that it is sometimes difficult to obtain a client's signature and that the current 30-day time limit for filing the client authorization statement allows enough time to obtain the signature. Ms. Vida, recognizing this concern, suggested that filers be allowed to fax in this form and send in a hard copy within 15 days. The Commission agreed to this recommendation.

5. Section 16.523(a)

Ms. Mayo stated that while this proposed gift limitation of $10 per month is based on a similar state law provision, the state prohibition applies to individual lobbyists only and not to lobbyist employers. She expressed her concern that a limitation of $10 per month would prevent the City and private sector lobbyists from engaging in mutually beneficial events and programs because the $10 threshold is so low. She explained that the mayor might, for example, request a lobbyist to sponsor an educational event in the public interest to be attended by City officers and the public. She noted under the proposed gift limit, such sponsorship would not be possible, because the cost of a facility, food, and beverages would exceed $10 per person.

Commissioner Melbostad questioned whether the sponsoring of an event to be attended by City officers would be deemed a gift to those officers who attend the event.

Deputy City Attorney Julie Moll stated that it is possible that such benefits at a lobbyist-sponsored event would be considered gifts. She stated that whether these are deemed to be gifts may depend on how the event is financed, and whether any of the exceptions to the gift rule imposed by the Political Reform Act apply. She noted that this proposed section is patterned after state law and that these sorts of events occur on the state level.

Commissioner Grant suggested increasing the gift limit to $50. She noted that lobbyists would still have to report any gifts as activity expenses.

The Commissioners agreed with that suggestion and voted to approve this section as amended.

**Motion 98-01-12-3 (Grant/Norris) Moved, seconded and passed. That Section 16.523(a) of the San Francisco Administrative Code be amended to establish a gift limit of $50.**

6. Section 16.523(b)

Deputy City Attorney Julie Moll explained that in certain limited circumstances, Prop 208 restricted lobbyists from making contributions to the officers they lobby. The Commission asked Ms. Moll to address how the recent ruling on Prop 208 would impact this section.

7. Section 16.523(c)

Ms. Mayo noted that this section would restrict lobbyists from accepting contingency fee payments. She stated that although this provision is based on a similar state provision, she is unaware of any harm caused by such financial agreements. She recommended deletion of this section.

Ms. Starkman stated that the intent of this section was to ensure that lobbyists did not receive a financial incentive for getting a law passed. Ms. Vida stated that contingency fees might encourage lobbyists to attempt to effect policy change "at any cost" by relying on unethical activity.

Commissioner Melbostad requested that staff research legislative history on the state level regarding the state's prohibition against contingency fees.

The Commission concluded its reading of the draft amendments and agreed to review suggested language and memos in preparation for a vote at the next meeting.

**IX. Discussion and Possible Action re: Authorizing staff to conduct workshops for filers of Statements of Economic Interests during February and March 1998.**

**X. Discussion and Possible Action re: Authorizing staff to conduct workshops during the first week of March 1998 for filers of electronic campaign statements re: use of mandated standard electronic filing formats.**

**XI. Discussion and Possible Action re: Authorizing staff to conduct workshops for lobbyist filers in February and September 1998.**

**XII. Discussion and Possible Action re: Authorizing staff to conduct workshops for campaign consultant filers in May 1998.**

**Motion 98-01-12-4 (Dockendorff/Norris) Moved, seconded and passed: The Ethics Commission authorizes staff to conduct workshops during the first week of March 1998 for filers of electronic campaign statements re: use of mandated standard electronic filing formats, and for campaign consultant filers in May 1998. The Commission also authorized workshops for SEI filers and lobbyist filers as time permits.**

**XIII. Discussion and Possible Action re: Items for Future Agendas**

Commissioner Melbostad requested that next month's agenda include an item regarding possible Commission sponsorship of a ballot measure to address matters no longer covered by state law as a result of Judge Karlton's decision invalidating portions of Prop 208.

Commissioner Dockendorff stated that he would like to amend the Commission's bylaws to require that Commission Members serve a minimum of six months to be eligible for election as Chairperson or Vice-Chairperson.

**XIV. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

Robin Renaldi of the Bay Guardian asked the Commission why it convenes in closed session and whether the results of the closed session would be available to the public. Commissioner Melbostad explained that the Commission meets in closed session pursuant to the Brown Act and Sunshine Ordinance to discuss pending litigation. He stated that the Commission would vote after the closed session on whether to disclose the discussion of the closed session.

**XV. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session.** The following motion was approved unanimously:

**Motion 98-01-12-5 (Grant/Dockendorff) Moved, seconded and passed: That the Commission conduct a closed session pursuant to Sunshine Ordinance 67.11(a).**

**XVI. Closed Session**

A closed session was held to confer with Legal Counsel regarding anticipated litigation. The Commission adjourned to open session at 7:40 p.m.

**XVI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.14 on whether to disclose action taken or discussions held in closed session.**

**Motion 98-01-12-6 (Grant/Dockendorff) Moved, seconded and passed: Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XVII. Adjournment.** The meeting was adjourned at 7:45 p.m.

Respectfully Submitted,

Naomi Starkman
Investigator/Auditor

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Ethics Commission

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San Francisco CA 94102
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# NOTICE OF MEETING AND CHANGE IN MEETING LOCATION:

## THE SAN FRANCISCO ETHICS COMMISSION'S

## REGULAR MEETING SCHEDULED FOR

## Monday, February 9, 1998, 5:00 P.M.

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## will be held at

## 401 Van Ness Avenue, Room 207

**The agenda for the February 9, 1998 meeting will be posted 72 hours in advance at SF Public Library/Government Section**
**and**
**401 Van Ness Avenue, 3rd Floor Bulletin Board Outside Room 308**

**The agenda will also be posted on the Commission's Internet web site at: http://www.ci.sf.ca.us/ethics/**

**The February 9 meeting will be held at 401 Van Ness Avenue, Room 207 to accommodate public attendance and participation regarding the Commission's review and approval of disclosure forms and a compliance manual for use by campaign consultants. These forms are promulgated to implement the City ordinance regulating campaign consultants, adopted by the voters at the November 1997 election.**

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

(NOTE CHANGE OF MEETING LOCATION)

# SAN FRANCISCO ETHICS COMMISSION AGENDA
## FOR
## MONDAY, FEBRUARY 9, 1998, 5:00 P.M.
## 401 VAN NESS AVENUE, ROOM 207

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I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of December 8, 1997

IV. Vice-Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
- A. Advice and Opinions issued
- B. Updates
- C. Projects and Activities

VII. Discussion and Possible Action re: Approval of Draft Campaign Consultant Manual and Forms

VIII. Discussion and Possible Action re: Approval of proposed Amendments to the Lobbyist Ordinance, S.F. Admin. Code sections 16.520 through 16.534, including but not limited to: adding legislative findings; clarifying definitions and adding new definitions; consolidating the definition of "lobbyist" with the thresholds for qualifying as a lobbyist and the exemptions; increasing the qualification thresholds for contract lobbyists from $1,000 to $3,500; increasing the qualification threshold for expenditure lobbyists from $1,000 to $5,000; clarifying and adding new exemptions; clarifying that once a person qualifies as a lobbyist the person is subject to the requirements and prohibitions of the Ordinance until the person ceases all lobbyist activity and files a statement of termination; requiring that lobbyists report contacts with and payments that benefit certain designated employees as well as City officers; clarifying the disclosure requirements applicable at the time of registration and at the time of filing quarterly activity reports; providing that all lobbyists re-register on January 15 of each year, rather than 15 days after the close of the calendar quarter that includes the anniversary of the date of initial registration; limiting the aggregate value of gifts from lobbyists to each City and County officer and to certain designated employees to $10 per month; prohibiting lobbying on a contingency fee basis;

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requiring lobbyists to notify City and County officers and designated employees of the value of gifts conferred; limiting political contributions by lobbyists; and adding transition provisions for implementation of these amendments.

IX. Discussion and Possible Action re: Possible Ballot Initiative or Amendment to Local Law Addressing Provisions of Proposition 208 that were enjoined by Federal District Court

X. Discussion and Possible Action re: Amendment to Commission Bylaws to require that the Commission Chairperson and Vice-Chairperson serve as Commission Members for six months before becoming eligible to serve as Commission officers

XI. Discussion and Possible Action re: Election of Commission Chairperson and Vice-Chairperson

XII. Discussion and Possible Action re: Motion to amend date of implementation for standard electronic filing format program from February 1, 1998 to February 15, 1998 for Forms 419, 4120 and 490

XIII. Discussion and Possible Action re: Approval of draft Annual Budget for FY 1998-99

XIV. Discussion and Possible Action re: Approval of Process for Appointing a Campaign Finance Auditor

XV. Motion: That the Ethics Commission authorize the Executive Director to post the Campaign Finance Auditor position, conduct interviews, notify Commissioners of a proposed candidate and provide his/her resume to Commissioners. After 5 days, if no Commissioner requests that this matter be calendared for the next meeting, the Executive Director will appoint the proposed candidate.

XVI. Discussion and Possible Action re: Items for Future Agendas

XVII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XVIII. Adjournment

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Approved 3/9/98

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# Minutes of the San Francisco Ethics Commission 401 Van Ness Avenue, Room 207 February 9, 1998, 5:00 p.m.

**I. Call To Order and Roll Call.** Commissioner Melbostad called the meeting to order at 5:00 p.m. The following were present:

COMMISSIONERS PRESENT: Vice-Chair Geoffrey Gordon-Creed, Robert D. Dockendorff, Isabella H. Grant, Paul H. Melbostad, and Henri E. Norris.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Shawn Allison, Campaign Finance Officer/Technical Assistant; Naomi Starkman, Investigator/Auditor.

OFFICE OF THE CITY ATTORNEY: Julie Moll, Deputy City Attorney.

OTHERS PRESENT: Anita Mayo, Pillsbury Madison & Sutro; Rod Loucks, DTIS.

MATERIALS DISTRIBUTED:
SF Ethics Commission Agenda, February 9, 1998;
Approved Minutes of the SF Ethics Commission: Meeting of December 8, 1997;
Draft Minutes of the SF Ethics Commission: January 12, 1998;
Executive Director's Report, February 9, 1998;
Whistleblower Tracking Chart, February 9, 1998;
Letter from Sheryl A. White, President of Statecraft, to Campaign Finance Officer Shawn Allison dated February 4, 1998;
Press Release of the SF Ethics Commission regarding Implementation of Proposition G, Regulation of Campaign Consultants Ordinance, February 4, 1998;
Notice to Prospective Filers Re: Implementation of Proposition G, January 26, 1998;
Notice to Campaign Consultants regarding deadline to file semi-annual statements, January 19, 1998;
Memorandum from Executive Director Ginny Vida to Secretaries of Boards and Commissions regarding Annual Statements of Economic Interests, Jan. 14, 1998;
Memorandum from Ginny Vida to Department Heads regarding Annual Statements of Economic Interests ("SEI") and Duties as Filers of SEI's;
Letter to Electronic Filers from Ginny Vida regarding Requirement to File Campaign Statements in Prescribed Standard Electronic Format, January 29, 1998;
Draft Memorandum to Finance Committee, February 4, 1998
Draft Campaign Consultant Manual dated February 6, 1998;
Memorandum from Julie Moll, Deputy City Attorney, to Commission Members, and to Ginny Vida regarding January 12, 1998 Amendments to the Lobbyist Ordinance, February 6, 1998
Draft Lobbyist Ordinance, February 6, 1998

* As amended and approved 3/9/98

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of January 12, 1998**

**Motion 98-02-09-7 (Grant/Norris) Moved, seconded and passed: That the minutes of the January 12, 1998 meeting be approved as drafted.**

**IV. Vice-Chairperson's Report**

Commission Vice-Chairperson Geoffrey Gordon-Creed thanked Commissioner Melbostad for chairing last month's meeting in his absence. Commissioner Gordon-Creed thanked Whistleblower/Educator Peggy Ahn for her excellent work in preparing the Fourth Quarter Lobbyist Report.

**V. Commissioners' Reports**

There were no reports from the Commissioners.

**VI. Executive Director's Report**
**A. Advice and Opinions issued**
**B. Updates**
**C. Projects and Activities**

Executive Director Ginny Vida reported that this month the staff has been very busy with several projects, including large mailings. In response to an inquiry from Commissioner Isabella H. Grant, Ms. Vida advised that the Finance Committee of the Board of Supervisors had approved the Commission's new lease for Suite 801, 1390 Market St., and will consider the Supplemental Budget at its next meeting. Both the lease and the Supplemental will then be referred to the Board for approval at two consecutive meetings.

**VII. Discussion and Possible Action re: Approval of Draft Campaign Consultant Manual and Forms**

Commissioner Norris and Commissioner Melbostad stated that they had received the Draft Campaign Consultant Manual and Forms. They requested an opportunity to review these documents for discussion at next month's meeting. Commissioner Robert D. Dockendorff suggested that the drafts be posted to the Internet to allow the public an opportunity to e-mail or fax comments to the Commission. The Commissioners agreed to postpone discussion of the materials until next month's meeting.

Commissioner Gordon-Creed then proceeded to Agenda Item XIII to allow Rod Loucks an opportunity to address the Commission regarding two proposed work orders to DTIS. Mr. Loucks stated that the implementation of the Electronic Filing Campaign Database and the Electronic Filing Format and Database for Lobbyist and Campaign Consultant Filings would allow the Commission to perform its job more efficiently and provide quality assurance tools for information disseminated to the public.

Ms. Vida stated that the campaign database will provide enhanced, automated auditing

functions that will save staff time in auditing filed campaign statements. The campaign database is also necessary for transfer of filed data to the Internet web site. She added that the lobbyist/campaign consultant formats and databases would eliminate re-keying of all data filed and would thus enable the Commission's investigators to spend less time preparing lobbyist and campaign consultant reports and more time conducting investigations.

Investigator/Auditor Naomi Starkman noted that currently staff devotes roughly two weeks per quarter preparing the Lobbyist report, and she estimated that staff would spend three weeks per quarter preparing the campaign consultant report. She stated that implementation of electronic filing formats would virtually allow the reports to "write themselves." Campaign Finance Officer Shawn Allison explained that revenues anticipated from implementation of increased lobbyist fees and new campaign consultant fees would offset the proposed expenditures associated with development and implementation of the electronic filing formats and databases.

**VIII. Discussion and Possible Action re: Approval of proposed Amendments to the Lobbyist Ordinance, S.F. Admin. Code sections 16.520 through 16.534, including but not limited to: adding legislative findings; clarifying definitions and adding new definitions; consolidating the definition of "lobbyist" with the thresholds for qualifying as a lobbyist and the exemptions; increasing the qualification thresholds for contract lobbyists from $1,000 to $3,500; increasing the qualification threshold for expenditure lobbyists from $1,000 to $5,000; clarifying and adding new exemptions; clarifying that once a person qualifies as a lobbyist the person is subject to the requirements and prohibitions of the Ordinance until the person ceases all lobbyist activity and files a statement of termination; requiring that lobbyists report contacts with and payments that benefit certain designated employees as well as City officers; clarifying the disclosure requirements applicable at the time of registration and at the time of filing quarterly activity reports; providing that all lobbyists re-register on January 15 of each year, rather than 15 days after the close of the calendar quarter that includes the anniversary of the date of initial registration; limiting the aggregate value of gifts from lobbyists to each City and County officer and to certain designated employees to $10 per month; prohibiting lobbying on a contingency fee basis; requiring lobbyists to notify City and County officers and designated employees of the value of gifts conferred; limiting political contributions by lobbyists; and adding transition provisions for implementation of these amendments**

The Commission discussed the remaining items yet to be decided regarding the Proposed Amendments to the Lobbyist Ordinance. Commissioner Gordon-Creed led the discussion and referred to the draft amendments dated February 6, 1998.

1. Section 16.521(a)

Commissioner Gordon-Creed stated that the definition of "activity expenses" now includes any expense incurred or payment made by a lobbyist or a lobbyist's client at the behest of the lobbyist, or arranged by a lobbyist or a lobbyist's client at the behest of the

lobbyist. He stated that Deputy City Attorney Julie Moll had noted that a lobbyist who "behests" a client to incur an activity expense does more than merely suggest or recommend the expense – the lobbyist urges the client to make the expense.

Commissioner Gordon-Creed noted that Anita Mayo of Pillsbury Madison & Sutro had provided the following definition for the term "at the behest of":

> "At the behest of" the lobbyist or filer means that the lobbyist or filer in fact directs and controls the expense or contribution. The terms do not include a mere request, recommendation or suggestion that an expense is incurred or a contribution made.

Ms. Mayo stated that her definition is based on the state law definition and that the ~~current~~ *nonexistence of a** definition could create confusion.

Commissioner Gordon-Creed noted that Ms. Mayo had also provided the following definition for the term "arranged by":

> "Arranged by" a lobbyist or a lobbyist's client means the lobbyist or lobbyist's client in fact directs or controls the expense or contribution, including the decisions whether to incur the expense or make the contribution, to or for whom the expense should be incurred or the contribution made, or the amount of the expense or the contribution. This section shall not be construed to prohibit a lobbyist from advising his or her client in a private communication about such expenses or contributions.

Staff recommended not defining these terms at this time. Staff stated that questions regarding these terms are better addressed in advice opinions regarding specific situations.

The Commissioners agreed to adopt the staff recommendation.

2. Section 16.521(c)

Commissioner Gordon-Creed noted Ms. Mayo's comment that the term "client" has practical meaning only for contract lobbyists who contract for economic consideration to lobby on behalf of others, i.e., their clients. Ms. Mayo recommended deleting the second sentence of this subsection. The Commission had asked staff, at last month's meeting, to consider Ms. Mayo's suggestion.

Staff stated that because the term "client" is used throughout the Ordinance, the proposed deletion could create confusion. Staff recommended leaving this subsection intact.

The Commissioners agreed to adopt the staff recommendation.

3. Section 16.521(d)(1)(C)

Commissioner Gordon-Creed stated that when this section appeared in the draft dated November 4, 1997, it excluded from the definition of "contact" a person "attending but not providing testimony in a public hearing." Commissioner Gordon-Creed noted Ms. Mayo's comment that under Section 16.522(4) of the current Ordinance, a person invited by or on behalf of any officer to confer, consult or give testimony falls outside the scope of the Ordinance. Under the proposed legislation, this language has been removed. Ms. Mayo had recommended that this provision be reinstated as an exemption from the definition of "contact" under proposed Section 16.521(d)(1).

Ms. Mayo recommended that the provision be reinstated in order to avoid confusion regarding the definition of "contact."

Staff stated that this exclusion is unnecessary because the term "contact" is defined as an oral or written communication. For this reason, staff noted, it is clear that mere attendance at a public hearing, without communication, is not a contact.

The Commission agreed to adopt the staff recommendation and requested that staff include examples for the definition of "contact" in a revised Manual.

4. Section 16.521(d)(1)(D)

Commissioner Gordon-Creed stated that at the November 10, 1997 meeting, Ms. Mayo suggested that the definition of "contact" should exclude communications by an attorney with a City officer or designated employee concerning a "legal claim" or "litigation" involving the City.

Staff stated that it had added language that explicitly includes claims filed pursuant to the Administrative Code.

The Commission approved the language proposed by the staff.

5. Section 16.521(d)(1)(F)

Commissioner Gordon-Creed noted that Ms. Mayo had recommended the deletion of the words: "provided that the written information is a public record available for public review." She recommended adding a presumption to this section that records would be made public and available for public review. Staff noted that a presumption has been included in this section. Staff recommended leaving the language intact.

The Commission agreed to adopt the staff recommendation.

6. Section 16.521(d)(1(L)

Commissioner Gordon-Creed stated that under Section 16.522(4) of the current Ordinance, a person invited by or on behalf of any officer to confer, consult or give testimony falls outside the scope of the Ordinance. This language had been removed. Ms. Mayo has recommended that this provision be included as an exemption from the definition of "contact" under proposed Section 16.521(d)(1).

Staff noted that it has included this exemption, stating that this Section now defines "contact" to exclude: "An expert employed or retained by a lobbyist registered under this Article to provide information to [rather than "expert testimony before"] an officer or designated employee of the City and County."

The Commission agreed to adopt the staff recommendation.

7. Section 16.521(d)(1)(N)

Commissioner Gordon-Creed stated that it was suggested that the words "significant segment" be included before the words "person's employees or members."

The staff added the requested language, and the Commission agreed to adopt the staff's revised language.

8. Section 16.521(d)(1)(O)

Commissioner Gordon-Creed stated that Ms. Mayo had suggested defining "contact" to exclude communications in connection with the administration of an existing contract. The suggestion was based on advice issued by the Commission in June 1995.

There was some discussion regarding the difference between "in-scope" and "out-of-scope" changes to an existing contract. Ms. Mayo asked for clarification regarding the term "out-of-scope" and the breadth and scope of that language. Deputy City Attorney Julie Moll stated that the terms "in-scope" and "out-of-scope," which were suggested by the City's attorneys specializing in contract law, are terms of art that have some recognized meaning in public contracting.

Staff noted that this subsection now defines "contact" to exclude communications in connection with the administration of an existing contract. It also defines the term "in connection with the administration of a contract."

The Commission agreed to leave the current language intact.

9. Section 16.521(d)(1)(P)

Commissioner Gordon-Creed noted that Ms. Mayo had recommended preserving the exemption under Section 16.522(6) of the current Ordinance regarding a person communicating with City officers or departments with respect to construction-related permits.

Staff noted that this section now defines "contact" to exclude "[a] person applying for, opposing or appealing a construction-related permit on the person's own behalf." Staff stated that under the current Ordinance, persons who are not lobbyists do not qualify as lobbyists based on seeking to oppose or appeal construction-related permits on their own behalf. Staff determined that this rule intended to protect individuals and small-community based groups from qualifying as lobbyists simply based on pursuit or opposition to permits on their own behalf.

The Commission agreed to adopt the staff's recommendation.

10. Section 16.521(j)(1)(A)(i)

Commissioner Gordon-Creed stated that he had asked Ms. Mayo to propose a definition for the term "entitled to receive." Ms. Mayo had provided the following definition:

> "Entitled to receive" means expenses that have been incurred and billed but not yet paid during the reporting period.

Staff recommended not defining this term because it is readily understandable.

The Commission agreed with the staff recommendation and decided to leave the current language intact.

Commissioner Gordon-Creed stated that at the Commission's request, staff had prepared a memo, dated January 12, 1998, detailing its rationale for increasing the qualification threshold for contract lobbyists from $1,000 in a calendar month to $4,200 in a consecutive three month period.

Staff stated that it believes it is fairer and more equitable to increase the qualification thresholds. The staff-recommended thresholds reflect an adjustment based on the Consumer Price Index.

The Commission agreed to adopt the staff's recommendation.

11. Section 16.521(j)(3)(A)

Commissioner Gordon-Creed stated that at the Commission's request, the staff had prepared a memo, dated January 12, 1998 detailing its rationale for increasing the qualification threshold for expenditure lobbyists from $1,000 in a calendar quarter to $4,200 in a consecutive three month period.

Staff reiterated that it believes it is fairer and more equitable to increase the qualification thresholds. The Commission agreed to adopt the staff recommendation.

12. Section 16.521(l)

Commissioner Gordon-Creed noted that Ms. Mayo had requested that the ordinance exempt from the definition of "contacts" non-lawyers (as well as lawyers) who contact City officers and employees regarding settlements that will be approved by the Board of Supervisors by ordinance. The Commission had asked staff to consider this suggestion.

Staff noted that it had decided against proposing such a change, but stated that it is willing to revisit this issue in the future if presented with information about the practical application and implications of treating communications by non-lawyers regarding settlements as "contacts."

The Commission agreed to adopt the staff recommendation.

13. Section 16.521(o)

Commissioner Gordon-Creed stated that the Commission had asked Ms. Mayo to

recommend to the staff either alternative language or a definition for the term "promised." Ms. Mayo recommended that the Commission delete the term "promised" and disclose only actual payments. In the alternative, she recommended using the phrase "entitled to receive," including the definition she provided in Section 16.521(j)(1)(A)(i).

Ms. Mayo questioned the language on page 6, line 20, referring to "promised" payments. Ms. Moll explained that only contract lobbyists are required to report payments they receive or are "entitled to receive," in exchange for attempts to influence local legislative or administrative action. In contrast, she noted that business and organization lobbyists are required to report payments they make in connection with lobbying services. Ms. Mayo then suggested that the language on page 6, line 20, referring to the term "...promised" be changed to "entitled to receive" for purposes of uniformity.

Staff recommended leaving the current language intact.

14. Section 16.521(o)(5)

Commissioner Gordon-Creed stated that the proposed definition of "payments to influence local legislative or administrative action" exempts payments made for certain activities that are excluded from the definition of "contacts" [activities described in Section 16.521(d)(1)]. The proposed definition does not exempt payments made for activities described in subsections (C), (L) and (P) of in Section 16.521(d)(1). Ms. Mayo had asked the Commission to exempt from the definition of "payments to influence local legislative or administrative action" all payments made for activities described in Section 16.521(d)(1)(P) [a person applying for, opposing or appealing a construction-related permit on the person's own behalf]. The Commission has asked staff to review this matter.

Staff explained that persons who are registered lobbyists are required to report payments made to influence administrative action regarding such permits. Staff reasoned that, although one does not qualify as a lobbyist based solely on efforts to obtain or oppose a permit on one's own behalf, it is in the public interest for qualified lobbyists to report money spent to influence administrative decision-making regarding construction-related permits, even if the permits are sought or opposed on the lobbyist's own behalf.

The Commission agreed to adopt the staff recommendation.

15. Section 16.522(b)(5)

Commissioner Gordon-Creed stated that all political contributions "arranged by" a lobbyist must be disclosed. Ms. Mayo had recommended a definition for the term. The suggested definition of this term is listed under item 1.

Staff noted its recommendation as discussed in item 1.

The Commission agreed to adopt the staff recommendation.

16. Section 16.522(b)(7)

Commissioner Gordon-Creed stated that this section provides that no lobbyist shall be required to report, upon registration or re-registration, certain activities described in

Section 16.521(d)(1) [activities that are exempt from the definition of "contacts"]. Ms. Mayo asked the Commission to provide that no lobbyist shall be required to report activities described in Section 16.521(d)(1)(P) [a person applying for, opposing or appealing a construction-related permit on the person's own behalf].

The staff declined to make the suggested change, per the discussion regarding item 14.

The Commission agreed to adopt the staff recommendation.

17. Section 16.522(d)(7)

Commissioner Melbostad had proposed this provision.

Commissioner Melbostad explained that requiring disclosure of payments made by City and County officers that are not made at "fair market value" would be tantamount to requiring lobbyists to admit to "bribery."

Commissioner Melbostad first suggested the following language referring to subsections 7(a) and 7(b): "according to usual standardized contract and payment terms not subject to negotiations between City and County officers and the filer."

Staff had no recommendation regarding this language.

Commissioner Melbostad stated that it is the public interest to be informed of the relationships that exist among City and County officers and local businesses if those businesses also serve as lobbyists. In particular, Commissioner Melbostad expressed concern regarding campaign-related services such as printing and mailing services. Commissioner Melbostad noted for the record that it was not his intent to single out campaign consultants. The Commission agreed to amend this section to require that lobbyists disclose payments received from City officers in exchange for "campaign consulting services" as defined in S.F. Admin. Code Section 16.541.

18. Section 16.522(d)(10)

Commissioner Gordon-Creed noted that this issue had been discussed in item 14.

Staff noted its recommendation as discussed in item 14.

The Commission agreed to leave the current language intact.

19. Section 16.523(b)

Commissioner Gordon-Creed stated that the Commission had reviewed this section and expressed his view that the proposed language is narrower and more tailored to a compelling state interest due to the language limiting the prohibitions on campaign contributions to a three-month time period.

Commissioner Melbostad added that the proposed language is narrowly tailored if campaign contributions are made in accordance with the three-month period and that this section as amended would not signify a restriction on a lobbyist's ability to make campaign contributions.

Staff noted that it had no recommendation regarding this matter.

The Commissioners agreed to retain the language proposed in this section.

20. Section 16.523(c)

At the January 12, 1998 meeting, Commissioner Melbostad had asked staff to research legislative history on the state level regarding the state's prohibition against contingency fees.

Investigator/Auditor Naomi Starkman reported that the state law prohibiting contingency fees was part of the initial 1974 Political Reform Act ballot initiative. For this reason, she explained, there is no legislative history regarding that section. In addition, the original ballot argument for the initiative did not include any language regarding this particular section. Staff recommended retaining this language.

Ms. Vida conveyed Commissioner Norris's concern that financial limitations might prevent non-profits from hiring contract lobbyists if the Ordinance prohibited their retention on a contingency fee basis. Commissioner Melbostad stated that non-profits would not be adversely affected by this prohibition, since they customarily use their own staff to lobby for their interests.

The Commission agreed to adopt the staff recommendation.

21. Additional Discussion

Ms. Mayo questioned whether members of City task forces are considered City officers for purposes of the Ordinance. She asked, for example, whether responding to requests for information by task force members would be considered as "contacts." The Commission decided to delegate to the Executive Director the task of developing language exempting task force members.

The Commission concluded its reading of the Draft Amendments to the Lobbyist Ordinance dated February 6, 1998. Commissioner Gordon-Creed commended staff, Ms. Moll and Ms. Mayo for their comments and substantial work in preparing the proposed amendments. The staff also noted the Commission Members' hard work over the course of several meetings in producing a final draft of amendments to the Lobbyist Ordinance.

**Motion 98-02-09-08 (Melbostad/Grant) Moved, seconded and passed: That the Ethics Commission approve the Lobbyist Ordinance, SF Admin. Code Secs. 16.520-16.534, as Amended.**

**IX: Discussion and Possible Action re: Possible Ballot Initiative or Amendment to Local Law Addressing Provisions of Proposition 208 that were enjoined by Federal District Court**

Commissioner Melbostad requested at last month's meeting that this item be included in the agenda for possible Commission sponsorship. Commissioner Melbostad stated that although he had made this request, the deadline had passed for placing an item on the June ballot. He stated that he was not suggesting any proposals at this time in light of the recent court decision on Proposition 208.

**X. Discussion and Possible Action Re: Amendment to Commission Bylaws to require that the Commission Chairperson and Vice-Chairperson serve as Commission members for six months before becoming eligible to serve as Commission officers.**

Commissioner Dockendorff spoke in favor of the proposed Amendment to the Commission Bylaws. He stated that a six-month time period requiring Commission members to serve on the Commission before becoming eligible to serve as Officers would allow Members to become better equipped for serving as Commission officers. Commissioner Melbostad agreed with Commissioner Dockendorff. Commissioner Gordon-Creed stated that Commission members should be free to elect Commission officers regardless of the length of time they have served as Members, and that factors other than length of service on the Commission may make a candidate most suitable to serve as a Commission officer. Commissioner Grant agreed with Commissioner Gordon-Creed.

The Commission decided not to approve the proposed amendment.

**XI. Nominations and Election of Chairperson and Vice-Chairperson for one-year terms commencing March 1998.**

Ms. Vida explained the rules for nominations and elections according to Robert's Rules of Order.

Nominations were opened for the office of Chairperson for a one-year term commencing March 1, 1998.

Commissioner Gordon-Creed nominated Commissioner Grant for the office of Chairperson. Commissioner Grant accepted the nomination.

No other nominations were offered for the office of Chairperson. The nominations were closed.

Commissioner Isabella Grant was elected Chairperson of the Ethics Commission.

Nominations were then opened for the office of Vice Chairperson of the Ethics Commission, a one-year position commencing on March 1, 1998.

Commissioner Grant nominated Commissioner Norris for the position of Vice Chair. Commissioner Norris accepted the nomination.

Commissioner Dockendorff nominated Commissioner Melbostad. Commissioner Melbostad accepted the nomination.

Commissioner Norris was elected Vice Chairperson of the Ethics Commission.

**XII. Discussion and Possible Action Re: Motion to amend date of implementation for standard electronic filing format program from February 1, 1998 to February 15, 1998 for Forms 419, 420 and 490**

Ms. Vida stated that the original date for implementation for the electronic filing format program, February 1, 1998, had proven impractical, and that amending the date to February 15, 1998 would not impede the implementation of the program.

**Motion 98-02-09-9: (Dockendorff/Grant) Moved, seconded and passed: That the date of implementation for standard electronic filing format program be amended from February 1, 1998 to February 15, 1998.**

**XIII. Discussion and Possible Action re: Approval of draft Annual Budget for Fiscal Year 1998-99**

The Commission approved the following enhancement items as set forth in the proposed annual budget:

1. Upgrade Campaign Finance Auditor to Class 1842 --- $5,246;
2. Upgrade Investigator/Auditor Position to Chief/Investigator/Deputy Executive Director --- $9,035;
3. Establish Permanent Part-Time (30 hrs/wk) Elections Clerk Position --- $29,845;
4. Work Order to DTIS for Electronic Filing Campaign Database --- $30,000
5. Establish Permanent Full-time Position: Coordinator, Lobbyist and Campaign Consultant Programs beginning January 1, 1999 (6 months) --- $21,780
6. Work Order to DTIS for Electronic Filing Format and Database for Lobbyist and Campaign Consulting Filings. --- $20,000.

**Total Enhancements requested: $115,906.** Staff noted that anticipated revenue of $52,175 in increased lobbyist fees and fines and implementation of new campaign consultant fees and fines would offset this request. The total cost of enhancements, adjusted for new revenue, would thus be $72,715.

The Commission delegated to Ms. Ginny Vida the authority to make necessary adjustments to the Budget in consultation with the Mayor's Office and the Controller's Office.

**Motion 98-02-09-10 (Dockendorff/Grant) Moved, seconded, passed: That the Ethics Commission approve the Draft Annual Budget for Fiscal Year 1998-99.**

**XIV. Discussion and Possible Action re: Approval of Process for Appointing a Campaign Finance Auditor**

Following a brief discussion, the Commission approved the following motion:

**XV. Motion 98-02-09-11(Dockendorff/Grant) Moved, seconded, passed: That the**

**Ethics Commission authorize the Executive Director to post the Campaign Finance Auditor position, conduct interviews, notify Commissioners of a proposed candidate and provide his/her resume to Commissioners. After 5 days, if no Commissioner requests that this matter be calendared for the next meeting, the Executive Director will appoint the proposed candidate.**

**XVI. Discussion and Possible Action re: Items for Future Agendas**

Commissioner Melbostad requested that next month's agenda include an item regarding Senator Burton's Legislation regarding slate mailer organizations in light of the recent injunction against Proposition 208.

**XVII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda within the jurisdiction of the Ethics Commission**

There was no public comment.

**XVIII. Motion 09-02-98-12 (Grant/Norris) Moved, seconded, passed: That the meeting of February 9, 1998 be adjourned.**

The meeting was adjourned at 7:58 p.m.

Respectfully Submitted,

_____

Peggy Ahn
Whistleblower/Educator

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Ethics Commission

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San Francisco CA 94102
Phone 554-9510 Fax 703-0121

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# SAN FRANCISCO ETHICS COMMISSION AGENDA
## FOR
## MONDAY, MARCH 9, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

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I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of February 9, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VII. Discussion and Possible Action re: Approval of Draft Campaign Consultant Manual and Forms

VIII. Discussion and Possible Action re: Revised draft Annual Budget for FY 1998-99

IX. Discussion and Possible Action re: Proposal to revise Timetable for Commission Initiatives to prioritize review of 1) Whistleblower Ordinance, 2) Charter Section 8.105 (Conflicts of Interest and Other Prohibited Practices)

X. Discussion and Possible Action re: Senator Burton's legislation re: slate mailer organizations in light of recent Federal District Court's injunction against Prop 208

XI. Discussion and Possible Action re: Items for Future Agendas

XII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XIII. Adjournment

(Please turn over for page 2.)

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*Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code §16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street #701, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics*

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(Approved 4/13/98)

**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market Street, Suite 801**
**March 9, 1998, 5:00 p.m.**

**I. Call To Order and Roll Call.** Commissioner Chair Grant called the meeting to order at 5:00 p.m. The following were present:

COMMISSIONERS PRESENT: Vice-Chair Henri E. Norris, Geoffrey Gordon-Creed, Robert D. Dockendorff and Paul H. Melbostad

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Shawn Allison, Campaign Finance Officer/Technical Assistant; Naomi Starkman, Investigator/Auditor

OFFICE OF THE CITY ATTORNEY: Julie Moll, Deputy City Attorney; Kiko Korn, Deputy City Attorney

OTHERS PRESENT: Anita Mayo, Pillsbury Madison & Sutro; David Pilpel; Kathleen Bacca, San Francisco Bay Guardian; Mike Lieberman, YouthWorks intern

MATERIALS DISTRIBUTED:
SF Ethics Commission Agenda, March 9, 1998;
Approved Minutes of the SF Ethics Commission: Meeting of January 12, 1998;
Draft Minutes of the SF Ethics Commission: Meeting of February 9, 1998;
Executive Director's Report, March 9, 1998;
Whistleblower Tracking Chart, March 9, 1998;
Legislation confirming approval of Supplemental Budget, February 4, 1998;
Notice to Prospective Filers re: Implementation of Proposition G, February 24, 1998;
Letter from Commissioner Geoffrey Gordon-Creed to the Ethics Commission, March 4, 1998;
Draft Campaign Consultant Manual dated March 6, 1998;
Memo from Executive Director Ginny Vida to the Ethics Commission re: Proposed Revisions to the Timetable for Commission Initiatives, March 3, 1998;
Memo from Commissioner Melbostad to Deputy City Attorney Julie Moll re: Senator Burton's Legislation and Possible Local Slatecard Disclosure Requirements, March 4, 1998;
Memo from Commissioner Melbostad to Deputy City Attorney Julie Moll re: Proposed Slate Mailer Regulations, March 9, 1998

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.**

David Pilpel, noting Commissioner Geoffrey Gordon-Creed's resignation, thanked Commissioner Gordon-Creed for his service to the Commission.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of February 9, 1998**

Commission Chair Isabella H. Grant asked for further clarification regarding language on page 5, section 4. Investigator/Auditor Naomi Starkman explained that staff had added language to the Lobbyist Ordinance that would exempt from the definition of "contact" communications by an attorney with a City officer or designated City employee concerning a "legal claim" or "litigation" involving the City.

Anita Mayo of Pillsbury Madison & Sutro requested that the language on page 4, section 1 read as follows: "Ms. Mayo stated that her definition is based on the state law definition and that the *non-existence of a* definition could create confusion." The Commission agreed to this change.

**Motion 98-03-09-13 (Gordon-Creed/Norris) Moved, seconded and passed: That the minutes of the February 9, 1998 meeting be approved as amended.**

**IV. Chairperson's Report**

There was no report from the Chairperson.

**V. Commissioners' Reports**

Commissioner Gordon-Creed stated that this would be his last meeting as an Ethics Commissioner. He thanked the Commission and the staff for their efforts. Commissioner Gordon-Creed said that the current Commission and its staff are well positioned to continue and improve the good work of the Ethics Commission.

Commissioner Melbostad thanked Commissioner Gordon-Creed for his efforts. He noted Commissioner Gordon-Creed's excellent work as Vice-Chairperson and as Acting Chairperson. Commissioner Melbostad thanked Commissioner Gordon-Creed for his diligent preparation during the review of the Lobbyist Ordinance and the Commission's Enforcement Regulations.

**VI. Executive Director's Report**

Executive Director Ginny Vida reported that the Commission's Supplemental Budget was approved by the Board of Supervisors on February 14. She stated that the new funds are in place so that the Commission can proceed to fill the Auditor and Senior Clerk Typist positions and purchase new computer equipment and software. Ms. Vida advised that she has prepared and posted job notices for the two staff positions, which were reviewed and approved by the Department of Human Resources.

Ms. Vida reported that the Mayor's Office has requested that the Commission, as part of its proposed budget for FY 1998-99, submit departmental "performance measures" regarding the quantity and quality of its programs. Ms. Vida explained that the Commission will embark on a new plan to incorporate performance measure tracking for its programs for the next fiscal year.

Ms. Vida reported that the proposed amendments to the Lobbyist Ordinance were forwarded to the Board of Supervisors on February 20, and were subsequently referred to the Rules Committee. The Clerk of the Rules Committee informed Ms. Vida that the earliest possible date that this item may be calendared is March 24. Ms. Vida stated that staff is preparing documents regarding the proposed amendments to the Lobbyist Ordinance for review by the Budget Analyst's Office.

Ms. Vida also reported that the Commission's workshop for electronic filers was canceled due to a lack of response. She stated that staff will reschedule the workshop for June.

Ms. Vida introduced Mike Lieberman, a senior from Lowell High School, who joined the Commission staff on March 3 as an intern through the City-sponsored Youth Works Program. Commission Chair Grant welcomed Mr. Lieberman.

**VII. Discussion and Possible Action re: Approval of Draft Campaign Consultant Manual and Forms**

David Pilpel asked the Commission whether there had been any legal challenges to date against the Campaign Consultant Ordinance. Deputy City Attorney Julie Moll told the Commission that there have been no legal challenges.

Mr. Pilpel stated that he thought the Campaign Consultant Manual and Forms were very comprehensive. He noted that filers must report appointment to public office during the reporting period if the appointment is made by a local officeholder who is the filer's client. He noted that the Ordinance does not define the term "public office" and asked whether this requirement included appointment by a local officeholder to a Task Force.

There was some discussion regarding the term "public office." Commissioner Melbostad asked Mr. Pilpel to forward a copy of the Sunshine Ordinance Task Force's definition of "public office."

Executive Director Ginny Vida and Commission Chair Grant commended Investigator/Auditor Naomi Starkman on her preparation of the Manual and Forms.

**Motion 98-03-09-14 (Melbostad/Gordon-Creed) Moved, seconded and passed: That the draft Campaign Consultant Manual and Forms be approved.**

**VIII. Discussion and Possible Action re: Revised draft Annual Budget for FY 1998-99**

Ms. Vida noted that a revised draft annual budget, different from that approved by the Commission at its February 9 meeting, had been included for discussion on today's agenda. The new version includes additional narrative regarding performance measures. Ms. Vida invited Commission members to convey any comments on the revised draft to her, since she is still working with the Mayor's Office to complete this section.

**IX. Discussion and Possible Action re: Proposal to revise Timetable for Commission Initiatives to prioritize review of 1) Whistleblower Ordinance, 2) Charter Section 8.105 (Conflicts of Interest and Other Prohibited Practices)**

Ms. Vida recommended revising the Timetable for Commission Initiatives to allow for a comprehensive review, clarification and strengthening of the Whistleblower Ordinance and Charter Section C8.105 (Conflicts of Interest and Other Prohibited Practices). She stated that this recommendation is based on staff's practical experience with these sections of law. She noted that the Whistleblower Ordinance is very difficult to apply because several of the terms in that law are not defined. Ms. Vida recommended that review of these two areas of law take precedence over other Commission initiatives. She advised that if her recommendation were approved, she would update the timetable to reflect any further changes approved by the Commission.

Commissioner Melbostad stated that it would be worthwhile to undertake a systematic review of these laws. He expressed concern, however, that the Commission would not be able to turn its attention to other, pressing matters such as the issue of regulating slate mailers. He stated that the Commission should consider revising the Campaign Finance Reform Ordinance (CFRO) as well.

Ms. Vida noted that staff had thought it advisable to wait for Proposition 208 to make its way through the courts before recommending revisions to the CFRO.

David Pilpel urged the Commission to consider revising the CFRO now and not to wait until a Prop 208 is finally resolved by the courts.

Commission Chair Grant stated that she would like to consider revising the CFRO as a third priority.

**Motion 98-03-09-15 (Melbostad/Dockendorff) Moved, seconded and passed: That the Commission revise the Timetable for Commission Initiatives to prioritize review of 1) Whistleblower Ordinance, 2) Charter Section 8.105 (Conflicts of Interest and Other Prohibited Practices) and 3) Campaign Finance Reform Ordinance.**

**X. Discussion and Possible Action re: Senator Burton's legislation re: slate mailer organizations in light of recent Federal District Court's injunction against Prop 208**

Commissioner Melbostad led a discussion regarding the possibility of regulating slate mailers. Commissioner Melbostad explained that several mailers had misled the voters by appearing to reflect the endorsement of a particular party or public official. He stated that the mailers were designed to confuse the voters as to the real position taken by a party or officer. He expressed his wish that the Commission draft legislation regulating misleading mailers.

Commissioner Melbostad stated that he would like to require that a statement be on file with the Commission signed by each public official listed, or indicated on a slate mailer, to confirm endorsement of a ballot measure or candidate. He also suggested prohibiting the use of names of a political party or endorsing organizations unless the party has officially taken the position indicated and granted permission in writing to use the party's name and logo.

The Commission reviewed a series of slate mailers collected by Commissioner Melbostad, in which he noted misleading information. There was some discussion as to whether the Commission has jurisdiction over regulating all types of mailers and campaign materials.

Commissioner Gordon-Creed agreed with Commissioner Melbostad regarding his suggestion that the Commission draft legislation regulating slate mailers. The Commission asked Deputy City Attorney Julie Moll to advise the Commission as to the current state or City laws that regulate slate mailers and campaign materials. The Commission requested information regarding its authority to regulate slate mailers and the various penalty options for violation of any proposed legislation. Ms. Moll stated that she would provide the Commission with the requested information. The Commission also asked the City Attorney to prepare legislative language to address the problems identified.

Commissioner Chair Grant asked that a discussion regarding staff recommendations for the possible regulation of campaign mailings and literature be calendared for the May meeting.

**XI. Discussion and Possible Action re: Items for Future Agendas**

There was no discussion of items for future agendas.

**XII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

Commission Chair Grant thanked Geoffrey Gordon-Creed for his dedication and service on the Commission.

Anita Mayo requested that the Commission amend the minutes. See Agenda Item III.

**XIII. Adjournment.** The meeting was adjourned at 6:35 p.m.

Respectfully Submitted,

Naomi Starkman

Naomi Starkman
Investigator/Auditor

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**Ethics Commission**

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA

## FOR

## MONDAY, April 13, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

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I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meeting of March 9, 1998**

IV. **Chairperson's Report**

V. **Commissioners' Reports**

VI. **Executive Director's Report**
- **A. Advice and Opinions issued**
- **B. Updates**
- **C. Projects and Activities**

VII. **Discussion and Possible Action re: Proposed procedure for a) Personnel Evaluation, Executive Director, and b) Proposed Form for Personnel Evaluation, Executive Director**

VIII. **Discussion and Possible Action re: Proposed amendments to Whistleblower Ordinance (Improper Government Activities Ordinance, S.F. Admin. Code section 16.400 et seq.)**

IX. **Discussion and Possible Action re: Proposed procedures for imposing, enforcing and appealing administrative fines imposed for the late filing of campaign disclosure statements.**

X. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

XI. **Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**Conference with Legal Counsel: Anticipated Litigation as Plaintiff**
**Number of possible cases: 1**

**Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

XII. **Discussion and Possible Action re: Items for Future Agendas**

**(Please turn over for page 2.)**

XIII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XIV. Adjournment

*Know Your Rights Under the Sunshine Ordinance*

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

REVISED 4/8/98

# SAN FRANCISCO ETHICS COMMISSION AGENDA
## FOR
## MONDAY, April 13, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of March 9, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

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VII. Discussion and Possible Action re: Proposed procedure for a) Personnel Evaluation, Executive Director, and b) Proposed Form for Personnel Evaluation, Executive Director

VIII. Discussion and Possible Action re: Proposed amendments to Whistleblower Ordinance (Improper Government Activities Ordinance, S.F. Admin. Code section 16.400 et seq.)

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(Please turn over for page 2.)

XII. **Discussion and Possible Action re: Items for Future Agendas**

XIII. **Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

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(Approved 5/11/98)

**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market Street, Suite 801**
**April 13, 1998 5:00 p.m.**

**I. Call To Order and Roll Call.** Commissioner Chair Isabella H. Grant called the meeting to order at 5:05 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Commission Chair; Henri E. Norris, Vice-Chair; Robert D. Dockendorff, Commissioner; Paul H. Melbostad, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Naomi Starkman, Investigator/Auditor

OFFICE OF THE CITY ATTORNEY: Julie Moll, Deputy City Attorney; Kiko Korn, Deputy City Attorney; Buck Delventhal, Deputy City Attorney

OTHERS PRESENT: Anita Mayo, Pillsbury Madison & Sutro; Robert Pender, S.F. Tenants Network; David Pilpel

MATERIALS DISTRIBUTED:
SF Ethics Commission Agenda, April 13, 1998;
Approved Minutes of the SF Ethics Commission: Meeting of February 9, 1998;
Draft Minutes of the SF Ethics Commission: Meeting of March 9, 1998;
Executive Director's Report, April 13, 1998;
Whistleblower Tracking Chart, April 13, 1998;
Memo from Executive Director Ginny Vida to the Ethics Commission re: Procedure for Personnel Evaluation and Proposed Evaluation Form, April 13, 1998;
Memo from Executive Director Ginny Vida to the Ethics Commission re: Postponement of Agenda Item VIII, April 13, 1998; and
Memo from Executive Director Ginny Vida to the Ethics Commission re: Proposed Policy for Late Campaign Disclosure Statements, April 13, 1998.

**II. Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of March 9, 1998**

**Motion 98-04-13-14 (Norris/Dockendorff) Moved, seconded and passed: That the minutes of the March 9, 1998 meeting be approved.**

## IV. Chairperson's Report

Commission Chair Grant reported that she had met with the Oakland Public Ethics Commission on March 28, 1998. Those attending from Oakland were Lisa Pearlman, Chairperson; Fumi Sugihara, Commissioner and former Chairperson; Joyce Hicks, Assistant City Attorney; Patrick Tang, Deputy City Attorney; Michele Abney, Deputy City Clerk; and Gary Cavazos, Executive Director. Attending from the San Francisco Ethics Commission were Ginny Vida, Executive Director; Julie Moll and Claire Sylvia, Deputy City Attorneys; Naomi Starkman, Investigator/Auditor; and Shawn Allison, Campaign Finance Officer/Technical Assistant. Commissioner Grant stated that the Oakland Ethics Commission began meeting one year ago with an initial annual budget of $168,000, and that currently its only staff member consists of the Executive Director. The Oakland Commission has 7 members. Four are appointed by the Mayor, and the other three are appointed by the 4 mayoral appointees. Commissioner Grant reported that the Oakland Ethics Commission is interested in learning the various operations of the San Francisco Ethics Commission, including its administration of the campaign consultant and lobbyist ordinances. She stated that she would like to be kept apprised of the Oakland Commission's progress.

## V. Commissioners' Reports

There were no reports from the Commissioners.

## VI. Executive Director's Report

A. Auditor and Senior Clerk Positions

Executive Director Ginny Vida reported that she and Mr. Allison had reviewed 23 resumes submitted for the Auditor position and had conducted the first round of seven interviews. A second round was conducted last week, with the assistance of Nori Hirosuna, Director of Internal Audits for the Controller's Office. Ms. Vida stated that when a candidate is identified, the resume for that candidate will be delivered to the Commission for review and approval.

Ms. Vida also reported that she had received 71 resumes for the position of Senior Clerk Typist and that she and Mr. Allison will review the resumes and conduct interviews.

B. Proposed FY 1998-98 Budget

Ms. Vida reported that on March 27, she, Commission Vice-Chair Henri E. Norris and Mr. Allison had met with staff members of the Mayor's Office of Finance and Legislative Affairs to discuss the Commission's requested enhancements to its 1998-99 budget. Ms. Vida stated that they had made a vigorous appeal on behalf of these items. The primary topics of discussion were the proposed database for electronic campaign filings and the proposed electronic filing format and database for lobbyist and campaign consultant filings. Staff subsequently provided additional information requested by the Mayor's Office. Ms. Vida reported that the Mayor's proposed budget will be issued on May 25. She noted that the Commission's proposed budget will be considered by the Finance Committee sometime between 1:00 - 6:00 p.m. on Tuesday, June 16. The Committee will hear public testimony on departmental budgets on Saturday,

beginning at 9:00 a.m. The Finance Committee's budget review is scheduled for Wednesday, June 24 and Thursday, June 25, at 1:00 p.m.

Commissioner Norris commented that the meeting had been productive and that she had supported the Commission's requested enhancements.

C. Proposed Amendments to Lobbyist Ordinance

Ms. Vida reported that the Proposed Amendments would not be on the April 14 agenda of the Board of Supervisors' Rules Committee because the legislative analysts had requested time to review the legislation. The Commission staff had requested that this item be calendared for May 12. Staff had been awaiting confirmation of that date.

Commissioner Robert D. Dockendorff expressed his concern that there had been little or no public comment regarding the proposed changes to the Lobbyist Ordinance. Ms. Vida stated that Supervisor Ammiano had sent a letter to the Commission questioning the proposed amendments. Ms. Vida stated that staff is preparing a detailed memorandum in response to each of Supervisor Ammiano's questions, including a section-by-section discussion of the proposed amendments. Ms. Vida noted that the memorandum also explains the impetus for the proposed amendments. She explained that most of the proposed changes originated from the staff based on its practical experience in working with filers and answering the numerous questions they raised. Ms. Vida noted that staff mailed notices to all registered lobbyists advising them of the proposed amendments and of the opportunity to raise any questions or concerns at the Commission's monthly public meetings. She also noted that the agenda for each of the four meetings at which the amendments were discussed was also sent to the Commission's list of interested individuals and organizations in advance of the meetings.

Commissioner Norris requested that staff keep track of the time spent gathering the information and preparing the memorandum for Supervisor Ammiano.

D. Report on Volume of Calls Received via the Whistleblower Hotline

Ms. Vida reported that since the Commission's last meeting, the Commission had received a total of 8 complaints, all of which alleged violations under the Whistleblower Ordinance. Of these, all were received by mail or via the Commission's main telephone line. None was received via the Whistleblower Hotline.

Since the Whistleblower Hotline was established on July 21, the Commission has received a combined total of 54 complaints via the Hotline, the main telephone line and by mail, as of April 10, 1998. A total of 15 complaints has been received since January 1, 1998.

Commissioner Dockendorff stated that the Commission should increase its efforts to publicize the Commission's Whistleblower Hotline. Noting that there are only two investigators on staff, Ms. Vida stated that outreach efforts would need to be balanced by the staff's ability to investigate additional complaints. Commissioner Paul H. Melbostad stated that he would like the Commission to generate more substantive complaints. Ms. Vida suggested that education and outreach might help the quality of the complaints filed with the Commission. David Pilpel

suggested that the Commission provide information as to the number of complaints pending investigation and those that have been resolved.

E. Electronic Filing

Lobbyist and Campaign Consultant Formats/Databases. Ms. Vida reported that on March 6, she, Mr. Allison, Ms. Starkman and Ms. Moll had met with Bink Feldkamp of DTIS to discuss development of electronic filing formats and databases for lobbyist and campaign consultant filings. Ms. Vida explained that staff will prepare the discreet information fields for the formats (based on the lobbyist and campaign consultant forms) and deliver these to DTIS. Later on, staff will survey filers to determine their preferences (e.g., for on-line filing versus electronic filing by disk). Staff will then propose a format for the Commission's review and approval.

Campaign Formats/Databases. Ms. Vida reported that on April 7, staff had met with representatives of the Secretary of State's Office, the Political Audit Division of the Franchise Tax Board, the FPPC and DTIS to discuss progress in implementing a standard electronic filing format for campaign filings and developing a corresponding database.

Ms. Vida advised that DTIS has developed an initial version of the database to allow for the transfer of electronically filed data to the Commission's web site. At the April 7 meeting, DTIS conducted a computer demonstration of the technology it has developed to receive electronic filings, transport the data for display on the Commission's web site, and print out the completed FPPC forms.

Ms. Vida reported that Statecraft, a campaign software vendor, hopes to have its new software (based on the Commission's new format) ready prior to the second pre-election filing on May 21. Statecraft has advised that it will make this software available for $100 to filers with less than $10,000 in activity. DTIS is also working to provide filers with the capacity to adapt the new format for use with Excel, and to print out the completed FPPC forms. She reported that DTIS will conduct an in-house demonstration for Commission staff as a preview of what they anticipate presenting in a workshop for filers in June, in advance of the first semiannual filing.

Ms. Vida reported that electronically filed statements from the first pre-election filing conducted by the Ethics Commission had been converted and posted on the web site. She also reported that that a second workshop for campaign filers will be held on Saturday, August 22, at 10 a.m., at 401 Van Ness Avenue. Room 207.

David Pilpel stated that he would like the Commission to post on its web site any amended Statements of Organization (Form 410) received by the Commission, in addition to the long forms currently available. Ms. Vida explained that the original Form 410's are filed with the Secretary of State and that the Commission receives only copies. The Commission is not the filing officer for those forms.

Mr. Pilpel also suggested that the Commission track legislation at the state level that may affect the Commission. He noted for example two bills, one of which would limit the enforcement powers of the Fair Political Practices Commission and therefore affect campaign disclosure laws.

Mr. Pilpel also suggested that the Commission's twelve-month timetable include the Commission's projected activities for a future 12-month period rather than activities accomplished in prior months. Commissioner Grant stated that she found it helpful to see the Commission's past activities.

The Commission then discussed the filing of Statements of Economic Interests (SEI's). Commissioner Dockendorff expressed concern that 40 percent of those required to file did not file their SEI's on time. Commissioner Norris commented that the current maximum late fee of $100 might not be an adequate impetus for filers to submit their SEI's timely. It was noted that state law determines the filing requirements and imposition of late fines, and that any changes to the current requirements would require amendments to the state law.

Commissioner Melbostad commented that the Commission should take a stronger position on ethics-related issues and establish regular communication with the Board of Supervisors. Chairperson Grant inquired whether the Commission could take positions on state legislative issues. It was noted that although the Commission may make recommendations, the state's central legislative committee is charged with making any decisions pertaining to state law.

**VII. Discussion and Possible Action re: Proposed Procedure for a) Personnel Evaluation, Executive Director, and b) Proposed Form for Personnel Evaluation, Executive Director**

Commissioner Grant requested that the Commission members use the proposed evaluation form for the Executive Director's performance evaluation. Commissioner Dockendorff questioned the origin of the form and whether it was required by the City. After some discussion, the Commission decided to use the form. Each member of the Commission will complete and submit it to Commissioner Grant by May 4, 1998, one week before the next Commission meeting scheduled for May 11, 1998. Commissioner Grant also stated that the Commission members will meet in a private executive session at the May 11 meeting to discuss the Executive Director's evaluation.

**VIII. Discussion and Possible Action re: Proposed Amendments to Whistleblower Ordinance (Improper Government Activities Ordinance, S.F. Admin. Code Section 16.400 et seq.)**

Ms. Vida requested that the Commission re-calendar the proposed amendments to the Whistleblower Ordinance for the June agenda in order to allow staff more time to research complex legal issues. The Commission agreed to continue this item as a priority for the June agenda. Commissioner Melbostad added that he would like the Commission to discuss the proposal regarding slate mailer organizations at the May 11 meeting.

IX. Discussion and Possible Action re: **Proposed Procedures for imposing, enforcing and appealing administrative fines imposed for the late filing of campaign disclosure statements.**

Robert Pender, Treasurer of San Francisco Tenants Network, a tenant's organization, stated that he had been fined for completing his campaign disclosure statements in longhand instead of typing or using a computer and that he paid the fine out of his own pocket. Mr. Pender stated that he does not have use of a computer. Ms. Vida explained that filers are not required to submit typewritten forms and that the forms may be handwritten as long as they are legible. Commissioner Melbostad advised that he had talked with Mr. Pender earlier. Commissioner Melbostad agreed that filers should not be fined for technical matters. Commissioner Dockendorff noted that electronic filing will soon be required of all filers and that some may have to gain access to public computers or hire someone to enter the data. Chairperson Grant thanked Mr. Pender for his comments.

Ms. Vida urged that the Commission approve the draft procedures proposed by the staff for imposing, enforcing and appealing administrative fines associated with the late filing of campaign disclosure statements. She stated that the proposed procedures are consistent with strict guidelines currently in use by the Secretary of State's Office, which the Commission has followed and distributed to filers in the past. She urged that the Commission approve its own set of written guidelines for imposing fines, and noted that in advance of a filing deadline, it would be useful to include a policy concerning late filed statements, in addition to a notice of the filing deadline. She noted that the proposed policy regarding the filing of late statements applies only to campaign statements and not to lobbyist or other filings. She also stated the importance of ensuring that campaign statements are timely filed, and emphasized that having a firm, written policy in place would encourage compliance.

Commissioner Melbostad suggested that the Commission implement a policy that would allow for exceptions, or in some cases, amnesty, while imposing strict guidelines for lateness. Ms. Vida commented that the Commission should be fair and not impose undue burdens on filers, but that filers should be aware of the consequences for filing late statements. Anita Mayo confirmed that the proposed policy addresses late filings only, as opposed to content, and that as long as campaign filings are submitted on time, no fines would be imposed. Ms. Mayo asked whether the Commission would provide a form to request a waiver. Ms. Vida stated that staff's current policy is to require filers to provide a letter explaining the reason for the late filing. Chairperson Grant and Commissioner Dockendorff recommended that the current procedure remain intact.

> Motion 98-04-13-15 (Melbostad/Grant): **Moved, seconded and passed: That the proposed policy regarding late campaign filings be adopted, and that the decision regarding the form of waiver be left to the staff's discretion.**

**X. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

The Commission members voted unanimously to conduct a closed session. A closed session was held.

**XI. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(C) and Sunshine Ordinance 67.11 to discuss pending litigation.**

Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 2

At the conclusion of the closed session, the Commission adjourned to public session and approved the following motion by unanimous vote:

**Motion 98-04-13-16, (Norris/Dockendorff) Moved, seconded, and passed: The Charter provides that deliberations regarding complaints are confidential Pursuant to section C3.699-13, the Ethics Commission finds that is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XII. Discussion and Possible Action re: Items for Future Agendas**

There was no discussion on this item.

**XIII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XIV. Adjournment.**

The meeting was adjourned at 7:20 p.m.

Respectfully Submitted,

Peggy Ann
Whistleblower/Educator

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION
# NOTICE OF SPECIAL MEETING AND AGENDA
## FOR
## WEDNESDAY, April 29, 1998, 4:30 P.M.
## 1390 MARKET STREET, ROOM 227

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I. Call To Order and Roll Call

II. Discussion and Possible Action re: Proposed Response to Supervisor Tom Ammiano's letter of April 1, 1998, requesting a detailed explanation of the Commission's proposed amendments to the Lobbyist Ordinance

III. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

IV. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

V. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

VI. Adjournment

(Please turn over for page 2)

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(Approved as amended 5/11/98)

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**Minutes of the**
**San Francisco Ethics Commission**
**Special Meeting**
**1390 Market Street, Room 227**
**April 29, 1998, 4:30 p.m.**

**I. Call To Order and Roll Call.** Commission Chair Isabella H. Grant called to order today's special meeting at 4:45 p.m. The meeting was convened for the purpose of reviewing a draft letter to Supervisor Tom Ammiano and conducting a closed session regarding pending litigation. The following were present:

**COMMISSIONERS PRESENT:** Isabella H. Grant, Chair; Henri E. Norris, Vice-Chair; Robert D. Dockendorff, Commissioner; Paul H. Melbostad, Commissioner.

**STAFF PRESENT:** Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator

**OFFICE OF THE CITY ATTORNEY:** Julie Moll, Deputy City Attorney; Buck Delventhal, Deputy City Attorney

**OTHERS PRESENT:** Gail Feldman, Billy Blattner, Legislative Analyst's Office, Board of Supervisors; Charlie Marsteller, Common Cause and League of Women Voters; Dave Gilson, Bay Guardian

**MATERIALS DISTRIBUTED:**
Letter from Supervisor Tom Ammiano to Ginny Vida, dated April 1, 1998;
Draft Letter from Ms. Vida to Tom Ammiano, dated "April ___, 1998"
Memo from Deputy City Attorney Julie Moll, and attached Legislative Digest and Proposed Amendments to the Lobbyist Ordinance
Copy of Letter to the Editor from Ginny Vida to the San Francisco Examiner, April 29, 1998

**II. Discussion and Possible Action re: Proposed Response to Supervisor Tom Ammiano's letter of April 1, 1998, requesting a detailed explanation of the Commission's proposed amendments to the Lobbyist Ordinance**

The Commission discussed changes to a draft letter responding to Supervisor Ammiano's letter of April 1, 1998, in which the Supervisor requested a detailed explanation of the Commission's proposed amendments to the Lobbyist Ordinance.

Commenting on the draft response to Supervisor Ammiano, Commissioner Paul H. Melbostad noted that the underlined changes are helpful in that they help to emphasize that the Commission is not attempting to create loopholes for lobbyists. He noted that the

Commission is proposing to tighten up the law and that the proposed amendments are a "good government" proposal.
Commissioner Melbostad suggested that the Commission explain the proposed amendments in simpler language. He added that the letter to Supervisor Ammiano does a good job of summarizing the proposed changes and explaining what prompted them. Commissioner Melbostad noted that most of the proposed changes were generated by staff, based on their experience in enforcing the Ordinance. He noted that certain provisions in the current ordinance are vague, which makes them difficult to comply with. Commissioner Melbostad noted that the Committee on Jobs had opposed some of the proposed amendments but that the Commission had approved them nonetheless.

Vice-Chairperson Norris stated that the letter is clear and to the point, and stated that she found the letter acceptable.

Commission Chair Grant stated that the Commission has explained every proposed provision, that Anita Mayo of Pillsbury Madison & Sutro had attended all of the meetings discussing the proposed amendments, and that the Commission also received input from David Pilpel, another member of the public.

Commissioner Melbostad stated that he has been under the impression that the Commission had a regular mailing list that included organizations such as the Harvey Milk Club and other organizations. He stated that in the future the Commission will make a greater effort to contact other groups and add them to the Commission's list of persons/entities that receive its agendas. Commissioner Melbostad stated that it is important to note that no one was excluded from the process of considering the proposed amendments. The Commission posted agendas of its meetings as required and also posted them on its web site.

Executive Director Ginny Vida noted that the mailing list already included some organizations and members of the press, but additional groups such as the League of Women Voters and Common Cause have now been added.

Commissioner Melbostad stated that in previous consideration of these amendments by the Commission, there was a heated debate about raising the threshold for qualifying as a lobbyist. He stated that he and Commissioner Robert D. Dockendorff had opposed raising the threshold, but a majority of the Commissioners had supported the staff recommendation.

Commissioner Chair Grant invited comment from members of the public.

Charlie Marsteller, representing the League of Women Voters and Common Cause, stated that Common Cause has been "behind the curve" on reviewing and commenting on these amendments and has only recently become involved in this matter. He stated that Common Cause has referred the amendments to technical staff in Los Angeles for review and analysis. Craig Holman, of the Center for Governmental Studies, will perform the review. Mr. Marsteller stated that the League of Women Voters and Common Cause

could both get input from Mr. Holman's analysis, and that Common Cause might also refer the proposal to its office in Washington, D.C. Mr. Marsteller added that the Commission should receive information from him early or mid next week, and that his organizations would give this matter their immediate attention. He added that they will make their comments to the Board of Supervisors, since the Commission has already submitted the amendments to the Board. Commissioner Melbostad, noting that it might be several months before the Board votes on the proposed amendments, requested that Mr. Marsteller submit a report to the Commission for its next meeting on May 11. He noted that the Commission could forward Mr. Marsteller's analysis to the Board.

Ms. Vida advised that the amendments have been referred to the Rules Committee of the Board, chaired by Supervisor Ammiano. She stated that the Committee has informed the Commission that the earliest possible date that this item can be calendared is May 12, but it will not be calendared until the Supervisor receives a response to his letter.

It was noted that making substantive changes to the proposed amendments might trigger the "30-Day Rule." It was also noted, however, that the Commission would not be prevented from forwarding comments from the public, such as Common Cause and League of Women Voters, to the Board during its review process.

Commissioner Dockendorff ~~suggested~~ *proposed a motion* that the Commission withdraw its proposed amendments from the Board to further review the proposed qualification thresholds. He stated that the proposal eliminates the larger lobbyists and does not eliminate smaller lobbyists from registration and disclosure requirements. *There was no second.*

Commissioner Melbostad stated that the Commission should move forward and not withdraw its proposal to the Board. He noted that the Commission could provide additional reports to the Board, if necessary, if the Commission finds, for example, that errors were made regarding certain definitions or if the proposals result in consequences that the Commission did not intend. Commissioner Melbostad noted that the Board will thoroughly review the legislation and all supporting documents. Commission Chair Grant added that the legislative analysts will also review the materials. Commissioner Melbostad requested that reports from the League of Women Voters and Common Cause, and from the Legislative Analysts, Gail Feldman, and Billy Blattner, be put on the agenda for the May 11 Commission meeting. Ms. Feldman, Chief Legislative Analyst, confirmed that her office will report on its review of the legislation at the May 11 meeting. Mr. Marsteller also confirmed that he will attend the May 11 meeting and report on his organizations' review of the proposed legislation. Mr. Marsteller said that Common Cause will prepare a document for the meeting.

Commission Chair Grant recommended that staff insert at the beginning of the letter to Supervisor Ammiano an explanation as to why the Commission did not submit the correct form of legislation to the Board. She noted that currently this explanation appears near the end of the draft letter. Commissioner Melbostad also suggested that the Commission add to the letter that the League of Women Voters, Common Cause and the

Legislative Analyst's Office will submit a report to the Commission, and that the Commission continues to welcome input from other groups.

Mr. Marsteller commented that Proposition 208's prohibitions on lobbying were "without caveat," and that the Commission's recommendations seemed narrower in scope (Section 16.523(b), paragraph 26 of the letter to Supervisor Ammiano). He stated that the proposed ban on lobbyist contributions three months prior and three months after a lobbyist contact might raise an issue for his organizations. Mr. Marsteller stated that he anticipated some opposition to this proposal from the League of Women Voters, but stated that in his view most of the proposed amendments appear to be technical in nature.

It was noted that the proposed prohibition is based on Proposition 208, but that it is more narrowly drawn.

Commissioner Melbostad stated that the three-month period discussed above is not set in stone. He stated that although lobbyists might argue that Proposition 208's ban would unconstitutionally restrict free speech, the proposed prohibition is a "middle ground." Mr. Marsteller stated that Proposition 208's provision is constitutional and that the drafting of Proposition 208 was tailored to withstand any constitutional challenges.

**Motion 98-04-29-19 (Norris/Melbostad) Moved, seconded and passed: That the Commission send to Supervisor Ammiano the proposed letter as amended.**

III. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

**Motion 98-04-29-20 (Melbostad/Norris) Moved, seconded and passed: That the Commission conduct a closed session.**

The Commission adjourned into closed session.

IV. **Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

Conference with Legal Counsel re: anticipated litigation as Plaintiff
Number of possible cases: 1

The Commission adjourned into public session.

V. **Discussion and vote as to whether to disclose deliberations conducted in closed session**

**Motion 98-04-29-21 (Melbostad/Dockendorff) Moved, seconded and passed: The Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

## VI. Adjournment

The meeting was adjourned at 6:30 p.m.

Respectfully submitted,

Peggy Ahn
Whistleblower/Educator

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**Ethics Commission**

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA
## FOR
## MONDAY, May 11, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meetings of April 13, 1998 and April 29, 1998**

IV. **Chairperson's Report**

V. **Commissioners' Reports**

VI. **Executive Director's Report**
- **A. Advice and Opinions issued**
- **B. Updates**
- **C. Projects and Activities**

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VII. **Discussion and Possible Action re: Reports from the League of Women Voters, Common Cause and the Legislative Analyst's Office on review and analysis of proposed amendments to the Lobbyist Ordinance**

VIII. **Discussion and Possible Action re: Proposed legislation regulating slate mailers to prohibit misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature**

IX. **Closed Session Pursuant to Ralph Brown Act, Section 54957 and Sunshine Ordinance Section 67.11, Personnel (Performance Evaluation, Executive Director Ginny Vida)**

X. **Discussion and Possible Action re: Disclosure of Closed Session Pursuant to Ralph Brown Act, Section 54957.1 and Sunshine Ordinance Section 67.14**

**Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: Personnel (Performance Evaluation, Executive Director Ginny Vida)**

XI. **Discussion and Possible Action re: Items for Future Agendas**

XII. **Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

XIII. **Adjournment**

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Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated Litigation as Plaintiff

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**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market St., Room 227**
**May 11, 1998; 5:00 p.m.**

(Language in *italics* denotes changes made to the draft minutes.)

**I. Call To Order and Roll Call.** Commission Chair Isabella H. Grant called the meeting to order at 5:15 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Robert D. Dockendorff, Commissioner. Commissioner Paul H. Melbostad was absent (excused).

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Shaista Shaikh; Campaign Finance Auditor; Naomi Starkman, Investigator/Auditor

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney

OTHERS PRESENT: Gail Feldman and Billy Blattner, Legislative Analyst's Office, Board of Supervisors; Anita Mayo, Pillsbury Madison & Sutro; Doug Haubert, Nielsen, Merksamer, et al; Edith McMillan; Charles Marsteller and Don Ellison, California Common Cause and League of Women Voters

MATERIALS DISTRIBUTED:
SF Ethics Commission Agenda, May 11, 1998
Approved Minutes of the SF Ethics Commission: Meeting of March 9, 1998
Draft Minutes of the SF Ethics Commission: April 13, 1998
Draft Minutes of the SF Ethics Commission: April 29, 1998
Executive Director's Report, May 11, 1998
Job Announcement for Campaign Finance Officer, April 24, 1998
Whistleblower Hotline Tracking Chart, May 11, 1998
Memo from Shaista Shaikh and Joe Lynn to Executive Director Ginny Vida re: Minutes from Meeting with DTIS meeting on May 7, 1998, dated May 8, 1998
Press Release re: Lobbyist Activity for the First Quarter of 1998, May 7, 1998
"Money Changes Everything," San Francisco Bay Guardian, May 6, 1998
Letter to Commission Chair Grant from California Common Cause, May 11, 1998
Fax from Commissioner Melbostad to Deputy City Attorney Julie Moll re: Proposed Slate Mailer Regulations, March 9, 1998
Sample legislation from Washington, Oregon and North Dakota re: Proposed Slate Mailer Regulations
Draft legislation re: Regulation of Slate Mailers and Other Campaign Literature
Section 16.503 S. F. Admin. Code (Campaign Finance Reform Ordinance)
Matier and Ross column, San Francisco Chronicle, 5/8/98

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

Edith McMillan stated that she wanted to determine whether a person who was recently appointed to a City board has a conflict of interest. She told the Commission that she had called the Commission office and was unable to speak to staff about this concern. She stated that she did not want to file a complaint against someone if that person did not have a conflict. Executive Director Ginny Vida explained that if a City officer has questions about whether there is a potential for a conflict of interest, that officer can contact the City Attorney's office for advice. She also explained that if member of public calls the Commission and asks if a particular situation would constitute a conflict of interest, staff could not advise on whether a violation of law is involved. Rather, Ms. Vida explained, staff can explain the conflicts of interest provisions under the Commission's jurisdiction. Deputy City Attorney Claire Sylvia offered to discuss Ms. McMillan's concerns with her over the telephone.

**III. Discussion and Possible Action Re: Approval of minutes of the meetings of April 13, 1998 and April 29, 1998**

**Motion 98-05-11-22 (Norris/Dockendorff) Moved, seconded and passed: That the minutes of the April 13, 1998 meeting be approved.**

Commissioner Dockendorff asked that the fourth paragraph on page 3 of the draft minutes of the April 29, 1998 minutes be amended to reflect the following change: "Commissioner Dockendorff ~~suggested~~ *made a motion...*".

Anita Mayo questioned the language on page 2 of the draft minutes that stated, "Commissioner Melbostad noted that the Committee on Jobs had opposed some of the proposed amendments...." She stated that did not recall seeing a written comment by the Committee on Jobs opposing the proposed amendments to the Lobbyist Ordinance. She said her firm, which did make comments on the proposed Ordinance, does not represent the Committee on Jobs. Because Commissioner Melbostad was not present, the Commission decided to leave the language intact.

**Motion 98-05-11-23 (Norris/Dockendorff) Moved, seconded and passed: That the minutes of the April 29, 1998 meeting be approved as amended.**

**IV. Chairperson's Report**

Commission Chair Isabella H. Grant noted that the S.F. Chronicle reporters Matier & Ross had included information from the Commission's first quarter lobbyist disclosure report in a recent column. Executive Director Ginny Vida reported that she subsequently called Mr. Matier and thanked him for including information from the lobbyist report, but asked that in the future Matier and Ross acknowledge the Commission as the source. Ms. Vida also referred to a recent article in the San Francisco Bay Guardian regarding the proposed amendments to the Lobbyist Ordinance. The Commission decided to respond to the article to clarify any possible inaccuracies.

**V. Commissioners' Reports**

There were no reports from the Commissioners.

**VI. Executive Director's Report**

**A. Advice and Opinions issued**

**B. Updates**

**C. Projects and Activities**

Ms. Vida introduced Shaista Shaikh, who was recently appointed to the new position of Campaign Finance Auditor. Ms. Shaikh, who holds a B.S. in Business Administration and Accounting from U.C. Berkeley, was previously employed as Deputy Registrar for the Department of Elections and as a full charge bookkeeper in the private sector. Ms. Shaikh thanked the Commission for selecting her for the position and stated that she looked forward to serving the Commission.

Ms. Vida also reported that Jennifer Deluta-Taloa was promoted to the position of Senior Clerk Typist. Ms. Taloa has served as an Elections Clerk with the Commission since July 1997. Ms. Vida stated that Shawn Allison, the Commission's Campaign Finance Officer and former Office Manager, resigned his position effective this month and has accepted a new position with DTIS as Contract Administrator. Commissioner Dockendorff thanked Mr. Allison for all of his hard work.

**VII. Discussion and Possible Action re: Reports from the League of Women Voters, Common Cause and the Legislative Analyst's Office on review and analysis of proposed amendments to the Lobbyist Ordinance**

Chief Legislative Analyst Gail Feldman informed the Commission that her office has not yet completed its review of the Commission's proposed amendments to the Lobbyist Ordinance. She noted that she is continuing to review lobbyist ordinances in other jurisdictions. Her office also continues to review the proposed qualification threshold and how it will impact disclosure requirements.

Legislative Analyst Billy Blattner commented that he is reviewing some of the items exempted from the definition of the term "contact." He is also reviewing the new gift limit and how it will affect City officials. He estimated that the Legislative Analyst's Report would be prepared in the next two weeks, before the Rules Committee meeting scheduled for May 26, 1998.

Charlie Marsteller and Don Ellison of California Common Cause/League of Women Voters referred to a letter and memo prepared by Mr. Marsteller on behalf of Common Cause regarding the Lobbyist Ordinance. Mr. Marsteller stated that both the memo and his letter, dated May 11, 1998, are intended to be constructive. The Commission requested that Mr. Marsteller provide it with a list of persons and organizations that might be interested in commenting on the Ordinance.

Commissioner Dockendorff made a motion to recall the proposed amendments from the Board of Supervisors. Commission Chair Grant stated her opposition to this motion, noting that the Commission staff had spent a considerable amount of time preparing the proposed amendments and that the Commission had spent several long meetings discussing all of the provisions of the Ordinance.

Ms. Vida stated that she did not believe the Commission had violated its bylaws (as Common Cause charged) in providing public notice of its four meetings at which the

amendments were considered. She noted that the Commission, in full compliance with the Sunshine Ordinance, had posted all of the agendas at the Board of Supervisors office and at the government office of the main library. The agendas were also posted to the Commission's web site. Investigator/Auditor Naomi Starkman stated that she had encouraged interested parties to attend the Commission's meetings regarding the Ordinance. She noted that Anita Mayo of Pillsbury, Madison and Sutro attends all of the Commission meetings, regardless of the items calendared for the agenda.

Commissioner Henri E. Norris stated that she thought there were many thoughtful proposals in the amendments and it would not serve the public interest to request that the amendments be returned to the Commission.

Mr. Marsteller stated that Common Cause did not have enough time to have input into the amendments. He stated that the contact person at the League of Women Voters would not be able to review the Ordinance until sometime in June, at the earliest. He said the first time he was notified of the amendments was in April, when Supervisor Ammiano's office contacted him.

Ms. Starkman stated that she had reviewed her telephone log and noted that she had spoken to Mr. Marsteller on January 23 regarding the changes to the Ordinance and had encouraged him to attend the Commission's meetings. Mr. Marsteller said he did not recall this conversation.

Anita Mayo stated that there seems to be general public confusion regarding the $4,200 thresholds. She noted that this threshold is a qualification threshold, not a reporting threshold. She stated that a person or entity would have to earn this much money before qualifying as a contract lobbyist, but once qualified would have to report all payments.

Commission Chair Grant made a motion to calendar a discussion of the amendments for the June 8 meeting so that the Commission and the public could review the Legislative Analyst's comments. At Ms. Vida's suggestion, the Commission agreed to direct the staff to contact Supervisor Ammiano to request that the Rules Committee delay its consideration of the amendments until later in June, after the Commission's June 8 meeting.

**Motion 98-05-11-24 (Norris/Dockendorff) Moved, seconded and passed: That the Commission continue discussion re: Reports from the Legislative Analyst's Office on review and analysis of proposed amendments to the Lobbyist Ordinance until the June 8, 1998 meeting.**

**VIII. Discussion and Possible Action re: Proposed legislation regulating slate mailers to prohibit misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature**

Investigator/Auditor Naomi Starkman stated that the Commission had requested that the staff develop some proposals for legislation regulating slate mailers and other campaign literature. She discussed the campaign literature presented at the March meeting. Ms. Starkman reviewed some examples of regulations from other jurisdictions that prohibit false political advertising. She then reviewed the staff's proposals for regulating misleading campaign literature. Ms. Starkman explained that one proposal, based on

legislation in another jurisdiction, prohibits the sending of paid political advertisements that contain a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate or ballot measure does not have such support or endorsement. The proposal would make such a violation punishable by a fine of $500 in a civil action brought by the public prosecutor.

Commissioner Norris asked how the term "violation" would be defined. She asked whether every individual piece of literature would constitute a violation or whether the entire mailing would constitute a violation. Staff explained that it would be a policy decision for the Commission to decide that matter.

Commission Chair Grant asked whether the Commission would be the enforcement authority for such a provision. Deputy City Attorney Claire Sylvia explained that the Commission does not normally act as the civil enforcement agency regarding such matters, but hears complaints and can hold administrative hearings.

Commissioner Dockendorff stated that he would like the proposal to act as a real deterrent to this sort of campaign literature. *He stated that a $500 penalty is not enough of a deterrent because it is merely the cost of doing business.* He stated that he would like to raise the penalty to at least $10,000 per violation and suggested that the penalty could be linked to the number of items distributed. Ms. Sylvia stated that she would report back to the Commission on what types of limits there may be on civil penalties.

Ms. Starkman stated that as an alternative to the first proposal, the Commission could require a disclaimer to be printed on paid political advertisements that contain unauthorized endorsements by public officials, candidates, political parties, or committees.

Commission Chair Grant stated that she would prefer to continue this matter to the June 8 meeting due to Commissioner Melbostad's absence. Commissioner Dockendorff stated that Commissioner Melbostad had worked on this matter previously and that it would make sense to continue the matter so that Commissioner Melbostad could be present for the discussion.

The Commission directed staff to develop an appropriate mailing list to provide public notice of the campaign literature item in advance of the June 8 meeting.

**Motion 98-05-11-25 (Norris/Dockendorff) Moved, seconded and passed: That Discussion and Possible Action re: Proposed legislation regulating slate mailers to prohibit misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature be continued to the June 8, 1998 meeting.**

**IX. Closed Session Pursuant to Ralph Brown Act, Section 54957 and Sunshine Ordinance Section 67.11, Personnel (Performance Evaluation, Executive Director Ginny Vida)**

**X. Discussion and Possible Action re: Disclosure of Closed Session Pursuant to Ralph Brown Act, Section 54957.1 and Sunshine Ordinance Section 67.14**

**Motion 98-05-11-25 (Norris/Dockendorff) Moved, seconded and passed: That the Commission finds that it is in the best interests of the public not to disclose its closed**

**session deliberations re: Personnel (Performance Evaluation, Executive Director Ginny Vida).**

At the conclusion of its closed session, the Commission announced that it had invited Ms. Vida to continue her employment with the Commission.

**XI. Discussion and Possible Action re: Items for Future Agendas**

There was no discussion regarding this item.

**XII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XIII. Adjournment**

The Commission adjourned at 7:15 p.m.

Respectfully Submitted,

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Naomi Starkman
Investigator/Auditor

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# ETHICS COMMISSION
# CITY AND COUNTY OF SAN FRANCISCO

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HENRI E. NORRIS
VICE-CHAIRPERSON

ROBERT D.
DOCKENDORFF
COMMISSIONER

PAUL H. MELBOSTAD
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

DATE: June 2, 1998

TO: Interested Individuals and Organizations

FROM: Ginny Vida G.V.
Executive Director

RE: June 8, 1998 Agenda

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Enclosed for your information is a copy of the agenda for the Ethics Commission's next regular meeting scheduled for June 8, 1998, at 5:00 p.m., 1390 Market Street, Room 227. Members of the public are welcome to attend and to comment on matters within the Commission's jurisdiction.

Two items may be of special interest:

**Item IX: Proposed Amendments to the Lobbyist Ordinance that were previously approved by the Ethics Commission and forwarded to the Board of Supervisors for consideration.** A legislative summary is enclosed. The proposed amendments may be obtained from the Ethics Commission at 1390 Market St., Suite 801, or from the Commission's web site at the following address: http://www.ci.sf.ca.us/ethics/

**Item X. Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature.** The draft legislation may also be obtained from the Ethics Commission office after 1:00 p.m. on Friday, June 5.

If you plan to attend the June 8 meeting, we would appreciate your calling the Ethics Commission in advance at 554-9510. (Advance notice will assist staff in accommodating members of the public.) Copies of the agenda packet for this meeting may be obtained from the Commission office on Friday, June 5 after 1:00 p.m. Please call in advance to request a copy.

s:lobbyist/ord/mem to public re June 8 mtg

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# SAN FRANCISCO ETHICS COMMISSION AGENDA
## FOR
## Monday, June 8, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of May 11, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VII. Discussion and Possible Action Re: Ethics Commission's requested enhancements for FY 1998-99 Annual Budget

VIII. Discussion and Possible Action Re: Release of data concerning complaints filed and processed by the Ethics Commission, including number and types of allegations, disposition/resolution of complaints and number of complaints currently within the Commission's jurisdiction

IX. Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance that were previously approved by the Ethics Commission and forwarded to the Board of Supervisors for consideration (see enclosed Legislative Digest)

X. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature

XI. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

XIII. Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

XIV. Discussion and vote as to whether to disclose deliberations conducted in closed session.

(Please turn over for page 2.)

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XV. Discussion and Possible Action re: Items for Future Agendas

XVI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XVII. Adjournment

*Know Your Rights Under the Sunshine Ordinance*

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# LEGISLATIVE DIGEST
(Revised April 27, 1998)

The Ethics Commission reviewed the San Francisco Lobbyist Ordinance and recommended that the Board of Supervisors adopt the amendments summarized below.

Under the Lobbyist Ordinance, individuals and entities that qualify as lobbyists are required to register with the Ethics Commission and periodically disclose certain information about contacts with and efforts to influence decisions by City officers. Lobbyists are also subject to certain prohibitions.

This legislation would adjust the monetary thresholds that determine whether and when one qualifies as a lobbyist. Currently, a person or entity may qualify as a lobbyist if the person or entity *receives or becomes entitled to receive* $1,000 or more in a calendar month in exchange for influencing or attempting to influence local legislative or administrative action ("contract lobbyists"). In addition, a person or entity may qualify as a lobbyist if the person or entity *spends* $1,000 or more in a calendar quarter to influence or attempt to influence local legislative or administrative action ("expenditure lobbyists"). This legislation would increase the qualification threshold for contract lobbyists from $1,000 in a calendar month to $4,200 in any three consecutive months. In addition, this legislation would increase the qualification threshold for expenditure lobbyists from $1,000 per calendar quarter to $4,200 in any three consecutive months. Also, this legislation would clarify that once a person or entity qualifies as a lobbyist the person or entity is subject to the requirements and prohibitions of this Article until the person or entity files a statement of termination.

This legislation would impose additional disclosure requirements, and modify and clarify existing disclosure requirements. For example, this legislation would require that lobbyists report contacts with and payments that benefit "designated City employees" as well as City officers. "Designated City employees" are those employees who are identified in the City's Conflict of Interest Code as persons who participate in decisions that could affect legislative or administrative action, and who must therefore file periodic Statements of Economic Interests.

A second example relates to the reporting of "activity expenses." Currently, lobbyists must report payments that benefit City officers and candidates for City office, and certain family members of such officers and candidates, if the payments aggregate $20 or more in value per calendar month. This legislation would require that lobbyists also report payments that benefit aides to members of the Board of Supervisors, designated City employees, and registered domestic partners and certain family members of City officers, candidates for City office, aides and designated employees. These payments would be reported if the payments were made within three months of a lobbyist contact with the officer, candidate, aide, or designated employee, and if the payments aggregate $30 or more in value in a consecutive three-month period.

A third example is that the legislation would require lobbyists to disclose payments received from City officers in exchange for campaign consulting services.

A fourth example is that the legislation would clarify the disclosure requirements applicable at the time of registration and at the time of filing quarterly activity reports, and require that all lobbyists re-register on January 15 of each year (rather than 15 days after the close of the calendar quarter that includes the anniversary of the date of initial registration. January 15 is the filing deadline for the fourth quarter activity reports).

This legislation would impose new prohibitions on lobbyists. For example, this legislation would limit the aggregate value of gifts a lobbyist may make to City officers and to certain designated City employees, within three months of a lobbyist contact, to $50. The legislation would also prohibit lobbying on a contingency fee basis. In addition, the legislation would prohibit lobbyists from making or soliciting campaign contributions to elected City officers, candidates for City office, and such officers' and candidates' controlled committees, within three months of contacting the department, board, commission, office or agency of the officer/candidate.

In addition, this legislation would: consolidate related sections; resolve ambiguities; codify previously-issued advice; and make terminology consistent throughout. For example, this legislation would consolidate the definition of "lobbyist" with the thresholds for qualifying as a lobbyist and the exemptions. A second example is that this legislation would add definitions for the terms "candidate," "contact," "designated employee," "filer," "gift," "lobbyist services," "measure," and "person."

FILE NO. _____ ORDINANCE NO. _____

[Regulation of Lobbyists]

AMENDING ARTICLE XIIA OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 16.520 THROUGH 16.534 TO: ADD LEGISLATIVE FINDINGS; CLARIFY DEFINITIONS AND ADD NEW DEFINITIONS; CONSOLIDATE THE DEFINITION OF "LOBBYIST" WITH THE THRESHOLDS FOR QUALIFYING AS A LOBBYIST AND THE EXEMPTIONS; INCREASE THE QUALIFICATION THRESHOLD FOR CONTRACT LOBBYISTS FROM $1,000 PER MONTH TO $4,200 PER QUARTER; INCREASE THE QUALIFICATION THRESHOLD FOR EXPENDITURE LOBBYISTS FROM $1,000 PER QUARTER TO $4,200 PER QUARTER; CLARIFY AND ADD NEW EXEMPTIONS; CLARIFY THAT ONCE A PERSON QUALIFIES AS A "LOBBYIST" THE PERSON IS SUBJECT TO THE REQUIREMENTS AND PROHIBITIONS OF THIS ARTICLE UNTIL THE PERSON CEASES ALL LOBBYIST ACTIVITY AND FILES A STATEMENT OF TERMINATION; REQUIRE THAT LOBBYISTS REPORT CONTACTS WITH AND PAYMENTS THAT BENEFIT CERTAIN DESIGNATED EMPLOYEES AS WELL AS CITY OFFICERS; CLARIFY THE DISCLOSURE REQUIREMENTS APPLICABLE AT THE TIME OF REGISTRATION AND AT THE TIME OF FILING QUARTERLY ACTIVITY REPORTS; PROVIDE THAT ALL LOBBYISTS RE-REGISTER ON JANUARY 15 OF EACH YEAR; REQUIRE LOBBYISTS TO DISCLOSE PAYMENTS RECEIVED FROM CITY OFFICERS IN EXCHANGE FOR CAMPAIGN CONSULTING SERVICES; LIMIT THE AGGREGATE VALUE OF GIFTS FROM LOBBYISTS TO EACH CITY OFFICER AND TO CERTAIN DESIGNATED EMPLOYEES, WITHIN THREE MONTHS OF A LOBBYIST CONTACT, TO $50; PROHIBIT LOBBYING ON A CONTINGENCY FEE BASIS; REQUIRE LOBBYISTS TO NOTIFY CITY OFFICERS AND DESIGNATED EMPLOYEES OF THE VALUE OF GIFTS CONFERRED; LIMIT POLITICAL CONTRIBUTIONS BY LOBBYISTS; AND ADD TRANSITION PROVISIONS FOR IMPLEMENTATION OF THESE AMENDMENTS.

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**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market Street, Room 227**
**June 8, 1998, 5:00 p.m.**

**I. Call To Order and Roll Call.** Commissioner Chair Grant called the meeting to order at 5:10 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Robert D. Dockendorff, Commissioner; Paul H. Melbostad, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Naomi Starkman, Investigator/Auditor; Joe Lynn, Campaign Filing Officer; Shaista Shaikh, Campaign Finance Auditor; Armando Gomez, Intern; David Moore, Law Clerk.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Gail Feldman and Billy Blattner, Legislative Ananlyst's Office, Board of Supervisors; Anita Mayo and Rozella Olivier, Pillsbury Madison & Sutro; Charles Marstellar and Don Ellison, California Common Cause and League of Women Voters; David Pilpel, Sunshine Task Force; Howard Wallace, Community Representative/Organizer; Robert J. Boileau, Operating Engineers Local Union No. 3; Walter Johnson, S.F. Labor Council; Tom Harrison, Laborers Local 261; Jim Salinas, Carpenters Union; Pardies Anparo, SEIU Local 87; Kevin Hughes, IBEW #6; Larry Kubo, County Counsel's Office, Santa Clara County

MATERIALS DISTRIBUTED:

SF Ethics Commission Agenda, June 8, 1998;
Approved Minutes of SF Ethics Commission: Meeting April 13, 1998;
Approved Minutes of SF Ethics Commission: Special Meeting April 29, 1998;
Draft Minutes of the SF Ethics Commission: Meeting of May 11, 1998;
Executive Director's Report, June 8, 1998;
Whistleblower Tracking Chart, June 8, 1998;
Ethics Commission's Proposed Annual Budget: FY 1998/99;
Proposed Amendments to the Lobbyist Ordinance, April 27, 1998;
"Talk Back," San Francisco Bay Guardian, June 3, 1998;
Letter to Ginny Vida from Charles Marstellar, Common Cause, June 1, 1998;
Legislative Analysis on Lobbyist Ordinance Amendments, Office of the Legislative Analyst, Board of Supervisors;
Common Cause Recommendations re: SF Lobbyist Amendments, dated June 8, 1998; Letter to Commission Chair Grant from California Common Cause, May 11, 1998;
"Judge Hopefuls Face Slate-Mailer Dilemma," San Francisco Daily Journal, June 1, 1998;
Matier and Ross column, San Francisco Chronicle, June 1, 1998;
"Big Money Pours Into S.F. Ballot Measures," San Francisco Chronicle, June 2, 1998;
Memo to Commission members from Claire Sylvia re: Local Regulation of Campaign Literature,

April 10, 1998;
Memo to Ethics Commission Members from Ginny Vida re: Enclosed Draft Legislative re: Regulation of Campaign Materials, dated June 4, 1998;
May 15, 1998 Campaign Consultant Workshop Materials;
Memo to Campaign Consultant Workshop Participants from Ginny Vida re: Questions Raised at the Campaign Consultant Workshop on May 15, 1998, dated May 22, 1998;

**II. Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of May 11, 1998**

Commissioner Robert D. Dockendorff asked that the fourth paragraph on page 5 of the draft minutes of May 11, 1998 be amended to reflect the following addition after the first sentence: "He noted that a $500 penalty would be no deterrent; it would be like a cost of doing business."

**Motion 98-06-08-26 (Norris/Melbostad) Moved, seconded and passed: That the minutes of the May 11, 1998 meeting be approved as amended.**

**IV. Chairperson's Report**

There was no report from the Chairperson.

**V. Commissioners' Report**

There were no reports from the Commissioners.

**VI. Executive Director's Report**

A. **Advice and Opinions**
B. **Updates**
C. **Projects and Activities**

Executive Director Ginny Vida highlighted the enhancements in the Commission's Proposed Annual Budget for FY 1998/99. She noted that the Commission has a base budget of $441,347 and has requested nine enhancements (please refer to the Ethics Commission's Proposed Annual Budget: FY 1998/99). The Mayor's office recommended three of the Commission's proposed enhancements. Of those three, two enhancements fell short of the Commission's requests. Ms. Vida stated that all of the nine enhancements are extremely important because the Commission has a small staff and a long list of charter mandates. She also stated that the staff is busy performing administrative tasks, assisting the public, and fielding phone calls while performing their other tasks. She noted that the Commission is required to administer the new Campaign Consultant Ordinance without new resources. The Lobbyist/Campaign Consultant position requested would be funded at 95% by new revenue in lobbyist & campaign consultant fees. Ms. Vida said that she would communicate with the Finance Committee, the Board of Supervisors and the Budget Analyst Staff regarding the budget.

Commissioner Paul H. Melbostad asked whether Commission staff member Joe Lynn would be

affected and how staff would be impacted if the elections clerk position is not approved. Ms. Vida clarified that Joe Lynn was recently promoted to Campaign Finance Officer. Ms. Vida explained that without an elections clerk position, tasks such as, assessing fines, sending out mailings regarding filings and Statements of Economic Interests are delayed or may not get done. Commissioner Melbostad stated that it is important that the Commission receive adequate clerical assistance. Ms. Vida invited the Commission members to attend the budget hearing on June 16.

Ms. Vida introduced the Commission's three summer interns. Armando Gomez, who receives his BS in political science from Santa Clara University this month, began a summer internship with the Commission on June 1. Kimberly Solar, a high school junior, began interning at the Commission on June 8. David Moore, a second year student at Hastings Law School, began interning as Law Clerk on June 8.

Shaista Shaikh, Campaign Finance Auditor, reported that she recently visited the Franchise Tax Board's Political Reform Division and the LA Ethics Commission for guidance in preparing the Commission's audit manual. She stated that before visiting the agencies, she studied both policies and procedures manuals, workpapers and audit reports. Ms. Shaikh stated that she would model the Commission's manual on the audit manual of the Franchise Tax Board, and will include provisions to audit for compliance of local regulations.

**VII. Discussion and Possible Action Re: Ethics Commission's requested enhancements for FY 1998-99 Annual Budget**

Chairperson Isabella H. Grant noted that this agenda item had been previously discussed under agenda item VI.

David Pilpel, member of the Sunshine Ordinance Task Force, suggested that the Commission administer the Sunshine Ordinance. Mr. Pilpel asked the Commission to consider housing a member of the Sunshine Ordinance Task Force on a part-time basis. He noted that the Board of Supervisors might be considering adding such a position to the Commission's budget and suggested that the staff member could also administer the Lobbyist Ordinance and the Campaign Consultant Ordinance.

Commissioner Melbostad questioned Mr. Pilpel as to the legal history and basis for his suggestion. Mr. Pilpel stated that when the Ethics Commission was formed, he thought that it would educate City & County of San Francisco employees about their duties related to the Sunshine Ordinance. Ms. Vida responded it was her understanding that administration of the Sunshine Ordinance is not included as one of the mandates for the Commission. Ms. Vida also stated that the Commission is struggling to meet its current mandates. Commissioner Henri E. Norris noted that the Commission has no office space to house a member of the Sunshine Task Force.

**VIII. Discussion and Possible Action Re: Release of data concerning complaints filed and processed by the Ethics Commission, including number and types of allegations, disposition/resolution of complaints and number of complaints currently within the Commission's jurisdiction**

Ms. Vida reported that she received a request from the press regarding data concerning complaints filed and processed by the Commission. Ms. Vida requested the Commission's approval to proceed with the project to compile such data and produce a report.

Commissioner Melbostad suggested that the report should emphasize that complaints with merits are pursued. He stressed that due to the confidentiality provisions in the Charter, the Commission is prohibited from providing information specific to any complaint.

**Motion 98-06-08-27 (Dockendorff/Melbostad) Moved, seconded and passed: That the Commission approve Ginny Vida's request to invest staff time in compiling data concerning complaints filed and processed by the Commission.**

**IX. Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance that were previously approved by the Ethics Commission and forwarded to the Board of Supervisors for consideration (see enclosed Legislative Digest)**

Charles Marstellar from California Common Cause and League of Women Voters, presented a 1-½-page summary of recommendations titled, Common Cause Recommendations re SF Lobbyist Amendments, hoping to expedite the Lobbyist Ordinance Process. Mr. Marstellar noted that he had prepared a comparison of his memo dated May 11, 1998 and the Ethics Commission's response dated May 27, 1998.

Chairperson Grant asked that the items on Mr. Marstellar's summary list be reviewed one by one. In regards to item I.b. from Mr. Marstellar's summary list, Commissioner Melbostad clarified that the Commission did reduce the reporting threshold from $20 per month to $30 in a consecutive three month period and that Mr. Marstellar would like to see the threshold lowered even further or removed in order to seek parity with State law. He questioned Investigator/Auditor Naomi Starkman as to why the recommendation for a lower threshold was made versus having no threshold. Ms. Starkman stated that state law is different and that's why the threshold is different. Anita Mayo said that thresholds are a good idea since the public does not want to know about petty amounts (i.e. a cup of coffee).

Mr. Marstellar stated that items 1.b. and 1.c.1 are similar in their merits and debate and he will leave these for the Commission's discretion. He deferred discussion on items I.c.2, V., and VI. He urged the Commission to consider modification, to not exclude experts, in regards to item II. In regards to item III. Mr. Marstellar requested the Commission to issue a definition of the terms "in-scope/out of scope contracting" if these are the terms that denote contract amendments. Commissioner Norris stated that the Commission needs some experience to base the definition on. Deputy City Attorney Claire Sylvia was asked to present the Commission with examples.

In discussing item IV.a. Mr. Marstellar stated that the Commission should raise the CPI for the last four years since the CPI requirements were enacted in Prop K that passed in 1993. He stated that California was in a recession at that time and so the CPI adjustments would be relatively low. He estimated that adjusting the CPI would result in the threshold being dropped from $4200 to $3200. Ms. Starkman noted that the Ordinance has not been amended since 1988 and so the Commission started with the base figures of 1988 with the threshold then being $1000 per month. She said she obtained the CPI for 1988 from the Department of Labor. She further stated that the Department of Labor advised the Commission to take a proportion of the 1988 CPI and the CPI at the time the amendments were proposed and then multiply by 1000. Thus the Commission arrived at $1400. Mr. Marstellar stated that the Commission's statutory authority is rooted in Prop K. It was his understanding that the base line would start at the effective date of January 1, 1994. He urged the Commission to look into the issue of going beyond its authority.

Mr. Marstellar, continuing with item IV.b., stated that if the registration fee were raised to $3000

plus CPI, it would eliminate the problem of low-income registrants. He recommended that the Commission address this issue at a future meeting. Mr. Marstellar suggested deleting Transitional Provisions (item VII.) of the Ordinance. He stated that these may have unintended consequences. He urged the Commission to take a further look at these and consider eliminating Section two of the Ordinance. Chairperson Grant stated that the Commission would look at Section two.

Mr. Marstellar commented that the Client Definition (item VIII.) does not read well. He noted that this item gives the appearance of singling out a specific group, the unions, and it may have unintended consequences. He recommended that the Commission attempt to simplify the definition. In regards to item IX., Mr. Marstellar stated that simple declaration on the document itself is inadequate to insure public disclosure. He asked the Commission to consider requiring disclosure to the Ethics Commission and/or the Clerk of the Board of Supervisors.

There was much debate on whether the commission should ask the Rules Committee of the Board of Supervisors to hold back the proposed amendments until further notice or whether the commission should withdraw the entire package. Mr. Marstellar pointed out that the commission's proposals were good. However, some parts of the package should be withdrawn. Bob Boileau, Director of Research of Operating Engineers Local Union No.3 and other union representatives stressed many times that they would like to have input and need to go back to their own commissions to discuss the matter further. It was determined that six weeks should be sufficient time for the unions to discuss this matter and return at a later date with input. Chairperson Grant scheduled the next commission meeting for July 22, 1998.

**Motion 98-06-08-28 (Melbostad/Norris) Moved, seconded, and passed: That Chairperson Grant will write a letter to the Board of Supervisors to hold the proposals until further notice from the Commission and until further input is received.**

**X. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature**

Discussion regarding this agenda item was continued from last month's Commission meeting. Commissioner Melbostad stated that the $500 penalty set as the maximum is too low. It would be comparable to the cost of doing business. Deputy City Attorney Claire Sylvia clarified that the $500 fine is per violation. She further explained that a violation refers to each piece of mailing. Commissioner Melbostad recommended the draft prepared by the City Attorney's Office be forwarded to the Board of Supervisors.

Commissioner Dockendorff suggested changes to the first draft. He requested the following change on page 1 lines 10-11, "Paid political advertisements that misrepresent the endorsement or support of public officials and organizations have become commonplace in recent local elections. Such campaign literature seriously undermines the integrity of the electoral process by misleading and confusing voters about the actual support for candidates or ballot measures." The second change that he requested was to add "door hanger" after the word "slate mailer" to section E on page 2.

David Pilpel suggested deferring this agenda item to the next meeting rather than passing a motion. Commissioner Melbostad expressed that the Commission had been working on this matter for two years. Charles Marstellar noted that the Commission performed its duty by notifying interested parties of this agenda item. Anita Mayo suggested including language that

would refer to "opposition" of a candidate or measure. Commissioner Norris requested that the discussion be deferred to the next Commission meeting.

**XI. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

The Commission members voted unanimously to conduct a closed session. A closed session was held.

**XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation**

**XIII. Conference with Legal Counsel: Anticipated Litigation as Plaintiff**

**Number of possible cases: 1**

At the conclusion of the closed session, the Commission adjourned to public session.

**XIV. Discussion and vote as to whether to disclose deliberations conducted in closed section**

**Motion 98-06-08-28, (?, ?) Moved, seconded and passed: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XV. Discussion and Possible Action re: Items for Future Agendas**

David Pilpel suggested that discussion regarding the Commission's housing of a member of the Sunshine Ordinance Task Force be calendared for the meeting on June 15, 1998. The Commission agreed to this suggestion.

**XVI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XVII. Adjournment**

The Commission adjourned at 9:00 p.m.

Respectfully Submitted,

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Shaista Shaikh
Campaign Finance Auditor

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Minutes



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*06/18/98*

**Ethics Commission**

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION
# NOTICE OF SPECIAL MEETING AND AGENDA
## FOR
## MONDAY, June 15, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

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I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action re: Proposal by David Pilpel, a member of the Sunshine Ordinance Task Force, to locate a permanent part-time (.25 quarter-time) employee at the Ethics Commission office to serve as staff person for the Sunshine Ordinance Task Force**

IV. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

V. **Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**Conference with Legal Counsel: Anticipated Litigation as Plaintiff**
**Number of possible cases: 1**

VI. **Discussion and vote as to whether to disclose deliberations conducted in closed session.**

**Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

VII. **Discussion and Possible Action re: Items for Future Agendas**

VIII. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

IX. **Adjournment**

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

(Revised 6/11/98)

# SAN FRANCISCO ETHICS COMMISSION
# NOTICE OF SPECIAL MEETING AND AGENDA
## FOR
## MONDAY, June 15, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

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I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action: Ethics Commission's proposed budget for FY 1998-99

IV. Discussion and Possible Action re: Proposal by David Pilpel, a member of the Sunshine Ordinance Task Force, to locate a permanent part-time (.25 quarter-time) employee at the Ethics Commission office to serve as staff person for the Sunshine Ordinance Task Force

V. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

VI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

VII. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

VIII. Discussion and Possible Action re: Items for Future Agendas

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X. Adjournment

(Please turn over for page 2)

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90 Ethics Commission

1390 Market Street, Suite 801
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# SAN FRANCISCO ETHICS COMMISSION AGENDA

**FOR**

**Wednesday, July 22, 1998, 5:30 P.M.**

**401 Van Ness Avenue, Room 207**

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**PLEASE NOTE CHANGE IN DATE, TIME and LOCATION**

I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meetings of June 8 and June 15, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VII. Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance that were previously approved by the Ethics Commission and forwarded to the Board of Supervisors for consideration (see enclosed Legislative Digest)

VIII. Discussion and Possible Action re: Approval of Proposed San Francisco Ethics Commission Audit Manual

IX. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature

X. Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999

XI. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

XIII. Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

(Please turn over for page 2)

XIV. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XV. Discussion and Possible Action re: Items for Future Agendas

XVI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XVII. Adjournment

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code §16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/*

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**Minutes of the**
**San Francisco Ethics Commission**
**401 Van Ness Avenue, Room 207**
**July 22, 1998, 5:30 p.m.**

I. **Call To Order and Roll Call.**

Commission Chair Isabella H. Grant called the meeting to order at 5:45 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Robert D. Dockendorff, Commissioner; Carol M. Kingsley, Commissioner; and Paul H. Melbostad, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Chad Jacobs, Law Clerk; Joe Lynn, Campaign Finance Officer; Naomi Starkman, Investigator/Auditor.

OFFICE OF THE CITY ATTORNEY: Kiko Korn, Deputy City Attorney; Tom Owen, Deputy City Attorney; Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Billy Blattner, Legislative Analyst's Office, Board of Supervisors; Philip Crosby, Reuben & Alter; Lerion Gaylor, Mayor's Office of Finance and Legislative Affairs; Tom Harrison, Local Union #261; Walter Johnson, SF Labor Council; Robert McCarthy, McCarthy & Schwartz; Erin McGrath, Board of Supervisors; Anita Mayo, Pillsbury Madison & Sutro; Ed Lieberman, Operating Engineers Local Union #3; Charles Marsteller, California Common Cause; David Pilpel, Sunshine Ordinance Task Force; Jim Salinas, Carpenters Union; James Sutton, Nielsen, Merksamer, et al; Don Vincent, Operating Engineers Local Union #39; Bill Wong, Carpenters Local Union #22.

MATERIALS DISTRIBUTED:

SF Ethics Commission Agenda, July 22, 1998
Approved as Amended Minutes of the SF Ethics Commission: Special Meeting June 8, 1998
Approved as Amended Minutes of the SF Ethics Commission: Meeting June 15, 1998
Approved Minutes of the SF Ethics Commission: Meeting May 11, 1998
Biography of Commissioner Carol M. Kingsley
Executive Director's Report, July 22, 1998
Whistleblower Tracking Chart, July 22, 1998
Recent Newspaper Articles
Proposed Amendments to the Lobbyist Ordinance, April 27, 1998
Common Cause's Recommendations re: Amendments to the Lobbyist Ordinance, June 8, 1998
City Attorney's Office Advice Letter to John Taylor, Clerk of the Board of Supervisors, June 10, 1993
Preliminary Data Summary of Complaints Received, July 22, 1998
Draft Legislation re: Regulation of Campaign Materials, July 17, 1998

Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Proposed Amendments to the Campaign Consultant Ordinance, July 22, 1998 (This document was inadvertently omitted from Agenda materials but is available at the Commission's office.)

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

David Pilpel requested clarification of the Commission's proposed action on Agenda Item VII (July 22 Agenda). Mr. Pilpel stated that he thinks the current description is overly broad and suggested including a brief, general description of the action proposed by the Commission.

Mr. Pilpel also stated that he though he had a productive meeting with Campaign Finance Officer Joe Lynn regarding the contents of the Commission's web site.

Charles Marsteller, representing Common Cause, stated that his organization will submit comments on the budget process in anticipation of the Commission's budget review in January 1999 (regarding the FY 1999-2000 budget).

III. **Discussion and Possible Action Re: Approval of minutes of the meetings of June 8 and June 15, 1998**

Minutes of June 8, 1998 Meeting: Mr. Pilpel suggested alternative language for Agenda Item 15, page 10, as follows: "The Commission agreed to calendar at its special meeting...."

Mr. Marsteller requested that the term "appropriate" be changed to "acceptable" on page 9, paragraph 1, to reflect more accurately his understanding of the L.A. Ethics Commission staff views. He also noted that he did not make the purported comment referring to the CPI calculation on page 9, paragraph 3. Commissioner Dockendorff acknowledged having made the comment.

Minutes of the June 15 Meeting: Mr. Pilpel suggested that the grammar in Item 3, paragraph 3, be revised.

**Motion 98-07-22-32 (Melbostad/Norris) Moved, seconded and passed: That the Minutes of the June 8 and June 15, 1998 meetings be approved as amended.**

IV. **Chairperson's Report**

Commission Chair Grant introduced Carol M. Kingsley as the Commission's newest member. City Attorney Louise Renne appointed Ms. Kingsley, a partner in the firm of Carroll, Burdick & McDonough. Ms. Kingsley specializes in tax law.

Commissioner Grant reported that she had appeared before the Board of Supervisors' Rules Committee in regard to her reappointment to a full term as a Member of the Ethics Commission. She stated that during the hearing, Supervisor Yee expressed concern that some campaign consultants may not have filed in accordance with the Campaign Consultant Ordinance. Supervisor Yee asked Chairperson Grant about the Commission's procedures for handling non-filers. Chairperson Grant said she explained to Supervisor Yee that the Commission is taking all necessary steps to ensure compliance with the Ordinance, including contacting all persons whom may have failed to file.

V. **Commissioners' Reports**

There were no reports from the Commissioners.

VI. **Executive Director's Report**

Executive Director Ginny Vida reported on the status of the Commission's budget request for FY 1998-99. She stated that the Mayor had proposed a total of $22,206 in enhancements to the Commission's budget, including $12,000 for two additional staff upgrades as well as $10,000 for the Commission's electronic filing program. Ms. Vida advised that she had advocated for funding for other enhancement items at two Finance Committee meetings, and that Commission Vice-Chair Henri Norris and Commissioner Paul H. Melbostad had also testified before the Finance Committee in support of additional enhancements.

Ms. Vida reported that at the full Board meeting, Supervisor Ammiano had moved to add an additional $40,000 to fund the Commission's electronic filing program, but that his motion had been defeated by a vote of 6-4. Ms. Vida also reported that Supervisor Mabel Teng, Chair of the Finance Committee, stated that she would propose a supplemental budget of $30,000 for the Commission after its $10,000 funding enhancement for electronic filing has been expended.

Ms. Vida stated that the supplemental budget would allow the Commission to perform automatic electronic audits of campaign statements filed by candidates and ballot measure committees. Ms. Vida said that the supplemental would also help with administration of the campaign consultant and lobbyist registration programs by enabling the Commission to establish electronic filing for those programs. She noted that the Commission has absorbed the start-up costs for implementation of the campaign consultant program, which have been proven to be considerable.

Ms. Vida added that in addition to funding for electronic filing, the Commission needs an additional staff person to administer the lobbyist and campaign consultant programs. Funding for this position would allow the staff's two investigators to spend more time investigating complaints. Currently, she stated, each investigator must administer the lobbyist and campaign consultant programs, each of which takes 40 percent of her time. The absence of a person to administer these programs is seriously diverting staff time from investigations.

Ms. Vida noted that the summary of the types and numbers of complaints received showed that as of July 22, 1998, the Commission had received 31 complaints in the current year, a substantial increase over past years.

Commissioner Melbostad noted that press reports on the Commission's various mandates have created an impression that the Commission is able to fulfill these mandates despite its current staffing level. He stated that forcing staff away from their investigative duties is unacceptable.

Mr. Pilpel commented that the summary of complaints prepared by staff was helpful to the public. He added that a quarterly summary of complaints, including the length of time to process each complaint, would be even more useful. He added that such a summary would also benefit the Commission in its efforts to demonstrate its budget needs.

Mr. Pilpel further suggested that the Commission post to its web site a list of those individuals that have failed to file their statements of economic interests by the April 1 deadline. Joe Lynn, Campaign Finance Officer, stated that he has notified all non-filers twice so far. Of the twelve

notified, the Commission has received three statements while nine are outstanding. Mr. Lynn added that the notification letters are available to the public.

VII. **Discussion and Possible Action re: Proposed Amendments to the Lobbyist Ordinance that were previously approved by the Ethics Commission and forwarded to the Board of Supervisors for consideration**

Commission Chair Grant noted that the Commission has conducted three additional meetings to consider public comments regarding its proposed amendments to the Lobbyist Ordinance. She added that the Commission conducted a special outreach to all interested parties about the present meeting and she invited any other interested parties to request addition to the list of interested parties. Commissioner Melbostad invited those at the meeting to inform staff of other community groups that might wish to be included in future discussions regarding the proposed amendments.

Commissioner Melbostad asked Deputy City Attorney Claire Sylvia to address the issues concerning labor unions. Ms. Sylvia explained that businesses and organizations that meet the qualification thresholds are subject to the Ordinance. Ms. Sylvia then stated that the Commission has consistently maintained that unions are organizations for purposes of the Lobbyist Ordinance. She stated that the proposed amendments do not change this; they simply clarify that labor unions are organizations and that unions that meet the qualification threshold are subject to the Ordinance.

Bill Wong, a business representative for the 3,000-member local Union 21, stated that the proposed ban on political contributions most concerned his members. He also stated that it is unfair to place unions in the same category as paid lobbyists because the City pays for union members' wages and benefits, unlike for-profit lobbyists. He urged the Commission to recall the proposed amendments from the Board. Jim Salinas, President of the Carpenter's Union, stated that his union pays him to represent the members' interests before City officials. He said it would be a waste for the union to have him report every contact he has with City officials. He also asked that the Commission recall the proposed amendments.

John Miranda, Business Agent for the Machinists' Union, stated that his union has never engaged in local lobbying activities because it employs a full-time lobbyist who is registered with the state. He stated that subjecting his union to the same requirements as conventional lobbyists would be unfair and unjust. Tom Harrison, a union representative, stated that he is employed by the union to handle disciplinary cases and negotiate contracts, and that it is unfair to place field representatives like him in the same category as paid lobbyists. Walter Johnson, a member of the S.F. Labor Council, commented that the unions recently succeeded in defeating Prop. 226.

Ed Lieberman, a business agent for Operating Engineers Local Union 3, stated that defining unions as lobbyists ignores the fact that 95 percent of a union's business has nothing to do with lobbying. He requested that the Commission recall the proposed Ordinance from the Board. Don Vincent, a business representative for Operating Engineers Local Union 39, stated that he represents union members in grievances and in contract negotiations. He echoed Mr. Johnson's sentiment that provisions of the proposed Ordinance mimicked Proposition 226.

Robert McCarthy, a contract lobbyist and partner and at the Law Office of McCarthy & Schwartz, stated that although he does not object to requirements to disclose lobbying activity, the Commission should not limit the rights of lobbyists and their clients in making political contributions--a right which he believes constitutes political expression. He added that it is unfair

for the Commission to prevent "working people" from sharing their beliefs with candidates; and that if the Commission believes there are lobbyists and/or candidates who are engaging in untoward conduct in their fundraising or lobbying activities, the Commission should punish that behavior but allow the rest of the public to freely exercise their First Amendment rights.

Commissioner Melbostad asked Ms. Sylvia to clarify whether all unions would have to register as lobbyists, and if so, whether all union officials would be prohibited from making political contributions. Ms. Sylvia explained that the Lobbyist Ordinance applies to three types of lobbyists: business and organization lobbyists, contract lobbyists, and expenditure lobbyists. She explained that a union would qualify as a lobbyist if it met the threshold test for business and organization lobbyists. Ms. Sylvia added that after hearing the comments of the union representatives, it is not clear whether the activities of each of the business representatives present at the meeting would result in their union meeting that test.

Ms. Sylvia also explained that the proposed ban on political contributions is restricted in that it applies only to a six-month period -- that is, three months before and three months after a lobbyist makes contact with a public official. The prohibition would also apply only to the public official actually lobbied by the lobbyist.

Philip Crosby, an attorney with the law firm of Reuben & Alter, stated that the proposed Ordinance is overly broad and ambiguous. He stated that his law firm helps clients with obtaining building permits and deals frequently with the Building Department and other City planning officials, dealings that require frequent and constant contact between the two parties. He stated that under the proposed amendments, a single phone call to a public official in response to an inquiry by that official qualifies as a contact. He questioned whether the Commission staff would be able to handle the increased volume of paperwork as a result of lobbyists having to keep track of and disclose each and every contact.

Investigator/Auditor Naomi Starkman explained that providing information in response to an oral or written request for information is exempt from the definition of a contact.

Mr. Crosby stated that the exemption applies only when the official solicits the information from the lobbyist, but not when the lobbyist contacts the official to inquire about the status of a client's project or to ask procedural questions. Ms. Starkman further explained that a person making a request regarding the status of a project is exempt from reporting this communication as a contact, as long as the communication is not intended to influence a governmental decision.

Mr. Crosby stated that the definition of "influence" was unclear.

Mr. McCarthy stated again that the Commission should not prevent lobbyists from supporting candidates that they believe in by enacting a ban on political contributions. He stated that such action might be appropriate only if unethical behavior arises from political contributions and becomes a major subject of ethics complaints to the Commission.

Commissioner Melbostad asked Mr. McCarthy whether his effectiveness as a lobbyist could be enhanced by the amount of political contributions that he donates to public officials. Mr. McCarthy said his effectiveness as a lobbyist is based on his lobbying skills and is unrelated to any political contributions he has made. He stated that as former public official, he never discussed campaign contributions with a proponent of a project. He stated that it was unfair to single out and require lobbyists to comply with the Ordinance and not require other organizations.

including volunteer groups such as the homeowners' and merchants' organizations, which also engage in lobbying, to comply.

Jim Sutton, of Neilsen, Merksamer, stated that the proposal banning political contributions by lobbyists does not pass constitutional muster. He stated that a federal court in January 1998 ruled that this provision is unconstitutional. Ms. Sylvia explained that the federal court enjoined Proposition 208 but did not find that the political contribution ban itself was unconstitutional. She also noted that the scope of the ban in the proposed amendments is much narrower than the broad ban contained in Prop 208.

Commissioner Dockendorff stated that the Commission has heard from Common Cause, lobbyists, and other concerned citizens, and that the public does not support the proposed amendments in their current form. He stated that the Commission, having heard from the public, should recall the amendments from the Board for further consideration. He added that when the Commission began deliberating on the amendments, half of the Commission's members were not yet appointed; thus the Commission did not receive the benefit of full input from all of its current members. Commissioner Dockendorff moved to recall the amendments from the Board for further consideration. Commissioner Melbostad seconded the motion.

Mr. Marsteller recommended that the Commission submit one complete version to the Board, and that the Commission revisit the threshold and other transitional amendments, which Common Cause proposed, once again.

Ms. Vida suggested that rather than withdraw the proposed amendments, now pending before the Rules Committee, the Commission should continue the item to the next meeting and inform the Board that it either supports the proposed amendments after having received further public comment, or that it wishes to amend certain provisions.

In response to an inquiry from Ms. Vida, Ms. Sylvia explained that the Board can consider the legislation at any time and that the Commission's role is to make recommendations to the Board. Ms. Sylvia stated that the Commission could make additional proposals or recommend changes in the current proposals.

Commission Chair Grant stated that she does not want the Commission to lose the momentum gained in discussions thus far. She noted that the Commission had already received substantive comments from the Legislative Analyst's Office concerning the proposed amendments.

Commissioner Dockendorff stated his concern that a Board member could at any time pull the proposals from the Rules Committee and bring them before the full Board. He stated that at that point, there would be no further opportunity for the Commission to receive comments from the public. He again recommended that the Commission recall the proposed amendments from the Board.

Mr. Pilpel stated that it is still unclear to him whether unions are or are not currently required to comply with the Lobbyist Ordinance. He also stated that it is unclear to him why unions should be exempt from the Ordinance. Mr. Pilpel further stated that the main purpose of the legislation is to clarify the definition of a "contact" and other definitions, and stated that those substantive changes would be delayed or lost if the provisions were removed from the Board. Mr. Pilpel noted that he believes that the proposed ban on political contributions three months before and after a lobbyist contact is a policy decision for the Commission. Mr. Pilpel also stated that he thinks that volunteer

organizations, because they differ from paid lobbyists, should not qualify as lobbyists.

Ed Lieberman of the Operating Engineers local Union #3, stated that the ban on political contributions is not a policy matter, but rather an unfair piece of legislation attempting to mimic Prop. 226. He urged that the Commission recall the amendments from the Board for reconsideration.

Mr. Sutton suggested that the Commission submit and move forward the non-substantive, administrative portions of the amendments and separate these from the controversial portions. He also suggested that the Commission conduct separate hearings on the substantive and administrative portions before the Board.

Mr. McCarthy also commented on the proposal banning contingency fees, stating that he was opposed to the ban for three reasons: (a) contingency fees help clients maintain confidence in the process and in their attorney; (b) contingency fees are usually paid by clients who cannot afford hourly fees, so banning contingency fees would unfairly hinder their ability to obtain representation; (c) courts have held that local governments cannot regulate attorneys' fees, and lawyers are sworn to represent their clients no matter what form of payment they receive. Therefore, banning contingency fees would serve an injustice to the legal profession.

Ms. Starkman explained that the Commission's prohibition on contingency fees is based on a similar provision in state law. She stated that this restriction would ensure that lobbyists do not have a direct financial incentive for successfully influencing legislative or administrative action. She also noted that the Commission had determined that contingency fees might encourage lobbyists to attempt to effect policy change "at any cost."

Mr. McCarthy stated that the State prohibition relates to passage of massive legislation, whereas the proposed contingency fee ban would adversely affect client matters involving minor governmental decisions, such as obtaining approvals for contracts or building projects. He said that unless the Commission has received complaints about lobbyists' receipt of contingency fees, the Commission should not attempt to regulate their fees.

Anita Mayo of Pillsbury Madison & Sutro commented that the Commission should consider the comments, review the proposed provisions a second time, and ensure that they are applied fairly to all organizations, profit and non-profit alike. Ms. Mayo also stated that she opposed the ban on political contributions. She added that the original intent behind the political contributions ban was to capture any undue influence among candidates and lobbyists, but that the $500 maximum contribution could hardly buy any "undue influence" today.

Commissioner Norris proposed amending Commissioner Dockendorff's motion and supported Mr. Sutton's proposal to separate the substantive from the administrative provisions before the Board. She suggested that the Commission reconsider items of concern expressed by the public, the ban on contingency fees. She also asked that those with further public comment come forward as soon as possible in order to expedite the Commission's final review of the amendments.

The Commissioners discussed whether or not to request that the Board to hold the amendments further, or whether to recall the proposals altogether.

Commissioner Norris withdrew her amendment to Commissioner Dockendorff's motion. She stated that she supported Commissioner Dockendorff's motion to recall the proposed amendments

from the Board for further consideration.

**Motion 98-07-22-33 (Dockendorff/Melbostad ) Moved, seconded and passed: That the Commission request that the Rules Committee of the Board of Supervisors return the proposed amendments to the Lobbyist Ordinance to the Commission for further review.**

Addressing the union representatives at the meeting, Commissioner Melbostad stated that the Commission's vote to recall the amendments should not misguide the unions to believe that all the issues concerning the unions have been decided. He stated that the unions must present to the Commission sound policy arguments as to why they believe that they should be exempt from the Lobbyist Ordinance.

The Commission decided that it will discuss Common Cause's proposed amendments at its next scheduled meeting on August 20, 1998.

VIII. **Discussion and Possible Action re: Approval of Proposed San Francisco Ethics Commission Audit Manual**

Ms. Vida requested that this item be continued to the next meeting's agenda, because the draft Audit Manual is still in preparation. She added that the manual would be made available before the next meeting scheduled on August 20, 1998.

IX. **Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature**

Ms. Vida noted that a recent Washington State Supreme Court decision calls into question government's ability to ban false statements contained in campaign literature.

Ms. Sylvia noted that she would provide the Commission members with advice regarding the Washington State case and its implications on the Commission's proposals to regulate campaign literature.

Commissioner Melbostad stated that the Commission has had a lengthy history of discussion regarding the regulation of campaign literature. He asked that the City Attorney, in considering the First Amendment issues, not return to the past issues involving preemption because those issues had been thoroughly discussed. Ms. Sylvia said that the Washington court decision raised new issues involving the First Amendment that are separate from the past issues involving preemption. She noted that preemption issues may still be raised in a challenge to the proposals under consideration.

Commissioner Melbostad asserted that the mere possibility of a challenge on those grounds was not a reason to not take action. Commissioner Melbostad stated that he preferred a proposal that prohibited false assertions of endorsement.

Mr. Pilpel stated that the problem with the proposal is in defining the nature of a false assertion.

Ms. Vida suggested that the purveyors of a piece of campaign literature might be required to obtain the approval of the alleged endorser. Commissioner Melbostad expressed concern that such a procedure might be too cumbersome, even though it would be prudent practice on the part of

those publishing campaign literature. Campaign Finance Officer Joe Lynn suggested that the alleged endorser could lodge a protest with both the campaign and the Commission to forestall a defense based on fair comment. Commissioner Melbostad indicated that the point may be good, but nothing can be done to prohibit fair comment.

Commissioner Norris suggested that those who contemplate disseminating a falsehood would refrain from such action if they faced a prohibitive fine.

Commissioner Melbostad stated that the proposal before the Commission is limited and narrow.

At Commissioner Grant's suggestion, it was decided that the matter be continued to the Commission's August 20 meeting to permit further consultation with the City Attorney.

Commissioners Norris and Melbostad agreed to meet with the City Attorney.

X. **Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999**

Ms. Vida noted that the Prop G ballot measure approved by the voters last November provided that the Commission propose registration and client fees for campaign consultants for review and approval by the Board of Supervisors. The Commission has deferred proposing such fees until data from the first filing, June 15, could be obtained. Based on that filing, the staff analyzed the costs of administering the program and submitted its proposal to the Commission. The staff's proposal would cover only 40 percent of the program at best. Ms. Vida stressed the need for the Commission to act swiftly on the proposal because the Ordinance provides that the Board of Supervisors must approve the fees by December for implementation the following year. If this timetable is not adhered to, the Commission will not be able to impose campaign consultant fees in 1999.

Ms. Starkman explained the basis of the staff's fee proposals as outlined in the staff report. She noted that as of the June 15 filing, only 24 filers had registered as campaign consultants. She explained that in determining the cost of administration and projected revenue, staff relied on an estimated 50 campaign consultants. Ms. Starkman then reviewed the two proposals.

The first proposal provides for a flat annual registration fee of $300 and $50 per client for all campaign consultants, regardless of earnings. These fees are based on the fees currently charged to lobbyists. This proposal would generate a projected annual revenue of $27,000, or 40 percent of the cost of administration of the program. Ms. Starkman explained that because the Ordinance provides for a low qualification threshold of $1,000 in a calendar year, filers earning at or near the threshold would be required to pay at least one-third of their earnings in fees ($300 plus at least one client fee of $50) if a flat fee were imposed.

The second proposal, favored by staff, provides for two tiers: Tier I filers, reporting annual earnings below $4,200, would pay a $70 annual registration fee and $10 client fee; Tier II filers, reporting annual earnings of more than $4,200, would pay a $300 annual registration fee and $50 client fee. Staff estimated that the tiered proposal would cover an estimated 32 percent of the cost of administering the program. Staff recommended the tiered proposal as being fairer to low earning campaign consultants.

Commissioner Melbostad suggested that the Commission refer to the language of the Prop G ballot measure and ballot arguments to determine whether the measure anticipates that the entire cost of the program will be offset by levying registration and client fees. In that case, he said, the Commission should consider a tiered approach to the fees that would allow campaign consultants with large revenues to pass on their fees to large clients.

Ms. Vida expressed concern that the Board might not approve a registration fee higher than $300. She noted that the Board of Supervisors had previously declined to approve the Commission's proposed lobbyist registration fee of $375 and client fee of $100, and that the Board had instead approved registration and client fees of $300 and $50 respectively.

Commissioner Melbostad suggested that a comparison with fees implemented by other departments such as the Planning Department may demonstrate that the proposed fees are not high.

Commissioner Norris expressed concern that high fees may provoke greater resistance to the program than already may exist. Commissioner Melbostad said he did not think voters were concerned about this.

Commissioner Grant stated that there is some urgency in approving the fees so that they can be implemented in 1999. She said that she hopes the matter will go before the Board for its December calendar.

Commissioner Melbostad agreed that the Commission should act in time for Board approval. He suggested that the Commission approve the staff proposals with a notation to the board that it does not consider levying the entire costs on the consultants feasible.

Mr. Pilpel questioned some of the estimates in the staff report, including anticipated staff time devoted to program administration. He also questioned the number of consultants who were expected to register. Mr. Pilpel stressed the importance of sensitivity to low-earning consultants. Ms. Vida explained that the costs included in the staff report are limited to ongoing administration of the program and do not include start-up costs, which have already been absorbed by the Commission. Mr. Pilpel suggested that electronic automation of the tasks might save some costs. Commissioner Grant assured him that electronic automation is the Commission's goal.

Commissioner Grant noted a consensus to continue the matter to the next meeting with continued outreach to the public for comment. Ms. Vida said that approximately 300 potential campaign consultants have been notified. The Commission notified close to one thousand people of this meeting. Commissioners Melbostad and Grant noted that the outreach had already produced two written responses to the fee proposal from two individuals.

Commissioner Dockendorff expressed his desire to see the costs pared down. Ms. Vida agreed to review the projected costs with a view to lowering them. She said, however, that the costs of administering a new ordinance include a certain amount of staff time to respond to questions from the public.

Commissioner Dockendorff suggested use of the Commission's web site to handle the questions. Ms. Starkman noted that the web site already includes answers to questions raised at a campaign consultant workshop given by the staff and will include all responses to future questions raised by the public. Mr. Pilpel suggested including these responses in the campaign consultant manual.

Commissioner Melbostad said that other departments such as the Planning Department charge for advice requiring use of staff time.

The matter was continued to the August 20, 1998 meeting.

XI. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

**Motion 98-07-22-34 (Melbostad/Norris) Moved, seconded and passed: That the Commission conduct a closed session.**

The Commission adjourned into closed session.

XII. **Possible Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**Conference with Legal Counsel: Anticipated Litigation as Plaintiff**

**Number of possible cases: 1**

At the conclusion of the closed session, the Commission adjourned to public session.

XIII. **Discussion and vote as to whether to disclose deliberations conducted in closed session.**

The following motion was passed by unanimous vote:

**Motion 98-07-22-35 (Melbostad/Dockendorff ) Moved, seconded and passed: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

XIV. Discussion and Possible Action re: Items for Future Agendas

No further items were requested for future agendas.

XV. **Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

XVI. **Adjournment**

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

| | |
|---|---|
| Peggy Ahn | Joe Lynn |
| Whistleblower/Educator | Campaign Finance Officer |

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**Ethics Commission**

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

## NOTICE OF SPECIAL MEETING

## SAN FRANCISCO ETHICS COMMISSION AGENDA
**for**
**Monday, July 27, 1998, 4:00 P.M.**
**1390 Market Street, Room 227**

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I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

IV. **Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

V. **Conference with Legal Counsel: Anticipated Litigation as Plaintiff**
**Number of possible cases: 1**

VI. **Discussion and vote as to whether to disclose deliberations conducted in closed session.**

**Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

VII. **Public Comment Re: Matters Appearing or Not Appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

VIII. **Adjournment**

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code §16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/*

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**Minutes Of The**
**San Francisco Ethics Commission**
***Special Meeting***
**1390 Market Street, Room 227**
**July 27, 1998, 4:00 p.m.**

I. **Call To Order and Roll Call.**

Commission Chair Isabella H. Grant called the meeting to order at 4:00 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Robert D. Dockendorff, Commissioner; Carol M. Kingsley, Commissioner. Commissioner Paul H. Melbostad was absent due to illness.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Naomi Starkman, Investigator/Auditor.

OFFICE OF THE CITY ATTORNEY: Tom Owen, Deputy City Attorney.

OTHERS PRESENT: Chuck Finnie, San Francisco Examiner.

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

There was no public comment.

III. **Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

**Motion 98-07-27-36 (Melbostad/Norris) Moved, seconded and passed: That the Commission conduct a closed session.**

The Commission adjourned into closed session.

IV. **Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**Conference with Legal Counsel: Anticipated Litigation as Plaintiff**

**Number of possible cases: 1**

At the conclusion of the closed session, the Commission adjourned to public session.

V. **Discussion and vote as to whether to disclose deliberations conducted in closed session.**

The following motion was passed by unanimous vote:

**Motion 98-07-27-37 (Melbostad/Dockendorff ) Moved, seconded and passed: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

VI. **Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

VII. **Adjournment**

The meeting was adjourned at 5:15 p.m.

Respectfully submitted,

Ginny Vida
Executive Director

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*08/24/98*

Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA

for

**Thursday, August 20, 1998, 5:00 P.M. – 7:50 P.M.**
**San Francisco Main Library, 100 Larkin Street**
**Latino Hispanic Room, Lower Level**

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## PLEASE NOTE CHANGE IN DATE, TIME and LOCATION

I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meetings of July 22, 1998 and July 27, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VII. Discussion and Possible Action: Adoption of rules/policy pertaining to public comment at Ethics Commission meetings

VIII. Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999

IX. Discussion and Possible Action re: Comments by Common Cause re: Proposed Amendments to the Lobbyist Ordinance (see enclosed Legislative Digest)

X. Discussion and Possible Action re: Approval of Proposed San Francisco Ethics Commission Audit Manual

XI. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature

XII. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

(Please turn over for page 2)

XIII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

XIV. Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

XV. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XVI. Discussion and Possible Action re: Items for Future Agendas

XVII. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XVIII. Adjournment

*Know Your Rights Under the Sunshine Ordinance*

*Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.*

*For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-6075.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code §16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/*

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FILE NO. _____ ORDINANCE NO. _____

[Regulation of Lobbyists]

AMENDING ARTICLE XIIA OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 16.520 THROUGH 16.534 TO: ADD LEGISLATIVE FINDINGS; CLARIFY DEFINITIONS AND ADD NEW DEFINITIONS; CONSOLIDATE THE DEFINITION OF "LOBBYIST" WITH THE THRESHOLDS FOR QUALIFYING AS A LOBBYIST AND THE EXEMPTIONS; INCREASE THE QUALIFICATION THRESHOLD FOR CONTRACT LOBBYISTS FROM $1,000 PER MONTH TO $4,200 PER QUARTER; INCREASE THE QUALIFICATION THRESHOLD FOR EXPENDITURE LOBBYISTS FROM $1,000 PER QUARTER TO $4,200 PER QUARTER; CLARIFY AND ADD NEW EXEMPTIONS; CLARIFY THAT ONCE A PERSON QUALIFIES AS A "LOBBYIST" THE PERSON IS SUBJECT TO THE REQUIREMENTS AND PROHIBITIONS OF THIS ARTICLE UNTIL THE PERSON CEASES ALL LOBBYIST ACTIVITY AND FILES A STATEMENT OF TERMINATION; REQUIRE THAT LOBBYISTS REPORT CONTACTS WITH AND PAYMENTS THAT BENEFIT CERTAIN DESIGNATED EMPLOYEES AS WELL AS CITY OFFICERS; CLARIFY THE DISCLOSURE REQUIREMENTS APPLICABLE AT THE TIME OF REGISTRATION AND AT THE TIME OF FILING QUARTERLY ACTIVITY REPORTS; PROVIDE THAT ALL LOBBYISTS RE-REGISTER ON JANUARY 15 OF EACH YEAR; REQUIRE LOBBYISTS TO DISCLOSE PAYMENTS RECEIVED FROM CITY OFFICERS IN EXCHANGE FOR CAMPAIGN CONSULTING SERVICES; LIMIT THE AGGREGATE VALUE OF GIFTS FROM LOBBYISTS TO EACH CITY OFFICER AND TO CERTAIN DESIGNATED EMPLOYEES, WITHIN THREE MONTHS OF A LOBBYIST CONTACT, TO $50; PROHIBIT LOBBYING ON A CONTINGENCY FEE BASIS; REQUIRE LOBBYISTS TO NOTIFY CITY OFFICERS AND DESIGNATED EMPLOYEES OF THE VALUE OF GIFTS CONFERRED; LIMIT POLITICAL CONTRIBUTIONS BY LOBBYISTS; AND ADD TRANSITION PROVISIONS FOR IMPLEMENTATION OF THESE AMENDMENTS.

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**Minutes of the**
**San Francisco Ethics Commission Meeting**
**San Francisco Main Library, 100 Larkin Street**
**Latino Hispanic Room, Lower Level**
**August 20, 1998, 5:00 p.m.**

**I. Call To Order and Roll Call.** Commission Vice-Chairperson Henri E. Norris called the meeting to order at 5:04 p.m. The following were present:

COMMISSIONERS PRESENT: Henri E. Norris, Vice-Chairperson; Robert D. Dockendorff, Commissioner; Carol M. Kingsley, Commissioner; and Paul H. Melbostad, Commissioner. Commission Chairperson Isabella H. Grant was absent as excused.

STAFF PRESENT: Ginny Vida, Executive Director; Peggy Ahn, Whistleblower/Educator; Armando Gomez, Provisional Campaign Finance Auditor; Chad Jacobs, Law Clerk; Joe Lynn; Campaign Finance Officer; Naomi Starkman, Deputy Executive Director.

OFFICE OF THE CITY ATTORNEY: Buck Deventhal, Kiko Korn, Claire Sylvia, Deputy City Attorneys.

OTHERS PRESENT: Bob Boileau, S.F. Labor Council; Philip Crosby, Reuben & Alter; Ed Lieberman, Operating Engineers Local Union #3; Charles Marsteller, California Common Cause; Anita Mayo, Pillsbury, Madison and Sutro; Robert McCarthy, McCarthy & Schwarz; Jeff Sheehy; David Spero.

MATERIALS DISTRIBUTED:

SF Ethics Commission Agenda, August 20, 1998

Approved as Amended Minutes of the SF Ethics Commission: Special Meeting June 8, 1998

Approved as Amended Minutes of the SF Ethics Commission: Meeting June 15, 1998

Draft Minutes of the SF Ethics Commission: Meeting July 22, 1998

Draft Minutes of the SF Ethics Commission: Special Meeting July 27, 1998

Executive Director's Report, August 20, 1998

Memo from Joe Lynn, Campaign Finance Officer to Executive Director, Ginny Vida re: Report on Electronic Filing, August 17, 1998

Whistleblower Tracking Chart, August 17, 1998

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Memo to Labor Unions in San Francisco from Executive Director Ginny Vida re: Compliance with the Lobbyist Ordinance, August 6, 1998

Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Proposed Amendments to the Campaign Consultant Ordinance, August 17, 1998

Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Common Cause Recommendations re: Amendments to the Lobbyist Ordinance, August 17, 1998

Letter from Common Cause to Ethics Commission, May 11, 1998

Letter from Commission Chair Isabella H. Grant to Charles M. Marsteller, May 27, 1998

Common Cause's Recommendations re: Amendments to the Lobbyist Ordinance, June 8, 1998

Proposed Amendments to the Lobbyist Ordinance, April 27, 1998

Draft Audit Manual

Draft Legislation re: Regulation of Campaign Materials, July 17, 1998

Recent Newspaper Articles

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

Bob Boileau, of the S.F. Labor Council, stated that he had received a letter from Executive Director Ginny Vida regarding the Commission's position that unions who qualify as lobbyists must register with the Commission. He stated that Ms. Vida had attached information from the Lobbyist Manual that states that unions are required to register as lobbyists if they qualify under the Ordinance. Mr. Boileau stated that he thought the Ordinance does not specifically include unions and that the Commission does not have the authority to include unions by way of codifying the City Attorney's opinion on this matter in the manual. He stated that he would like to obtain a copy of the manual. He told the Commission that his attorneys have advised him that his union is not covered by the Ordinance because the City is preempted by State and Federal law on this matter. He urged the Commission not to take action on Ordinance at this time due to the proximity of the November election.

Jeff Sheehy, campaign manager for Prop. G, stated that he is extremely concerned regarding the proposed campaign consultant fees. Mr. Sheehy stated that the voters, in approving the Campaign Consultant Ordinance, did not anticipate that low-earning campaign consultants would have to pay such high fees. He expressed his belief that the proposed fees appear punitive and that they discourage people from engaging in low-earning campaign consultant activity.

Commissioner Paul H. Melbostad noted that the Commission had taken into consideration the low-earning campaign consultants when it had discussed the proposed fees at its last meeting.

**III. Discussion and Possible Action Re: Approval of minutes of the meetings of July 22, 1998 and July 27, 1998**

**Motion 98-08-20-38 (Melbostad/Dockendorff) Moved, seconded and passed: That the minutes of the July 22, 1998 meeting be approved.**

**Motion 98-08-20-39 (Dockendorff/Kingsley) Moved, seconded and passed: That the minutes of the July 27, 1998 meeting be approved.**

**IV. Chairperson's Report**

There was no report from the Chairperson.

**V. Commissioners' Reports**

There were no reports from the Commissioners.

**VI. Discussion and Possible Action: Adoption of rules/policy pertaining to public comment at Ethics Commission meetings**

Executive Director Ginny Vida stated that the Commission may want to consider adopting a policy pertaining to public comment at its meetings. She noted that most Commission and Boards have adopted policies limiting public comment and that specific public comment periods might assist the Commission in conducting its business in a more efficient manner. Ms. Vida read the proposed policy:

Each member of the public in attendance at Ethics Commission meetings will be limited to one statement up to 3 minutes duration per each open session agenda item. Members of the public are encouraged to submit, prior to a Commission meeting, written comments pertaining to specific agenda items.

In response to an inquiry from Ms. Vida, Deputy City Attorney Claire Sylvia stated that the Sunshine Ordinance authorizes the Commission to limit its public comment period.

Mr. Boileau stated that one, three-minute discussion was not long enough. He suggested that the Commission be able to extend this period if it so chooses.

Commissioner Melbostad stated that he believed that other City departments allow a member of the public to speak for more than three minutes, if that person is directly affected by a particular agenda item or wants to make a presentation.

Commissioner Robert D. Dockendorff stated that in his opinion, the Commission should encourage members of the public to attend its meetings and not attempt to limit the public comment period.

Commissioner Carol M. Kingsley stated that she agreed with Commissioner Dockendorff that the Commission should encourage public participation at its meetings. She noted, however, that members of the public may not want to attend the Commission's meetings if one or two people spend most of the time talking. She stressed that the Commission needed parameters on the amount of time that each person is allowed to speak.

The Commission decided to continue this item to the next meeting.

**VII. Executive Director's Report**

Executive Director Ginny Vida stated that she had met with the Administrative and Finance Committee of the City's Civil Grand Jury. Ms. Vida stated that she was invited to make a presentation about the Commission's mandates. She noted that the Civil Grand Jury had requested additional information about the Commission and that she was in the process of responding to that request.

Ms. Vida also suggested that the Commission request a meeting with the editorial board of the San Francisco Examiner to discuss two recent press articles criticizing the Commission's handling of complaints.

Commissioner Dockendorff expressed his concern that the Commission be prepared before it meets with the press regarding this matter. Ms. Vida stated that it was her intention that such a meeting would be well planned. She stated that it was important for the Commission to educate the media about its goals and accomplishments. Commissioner Dockendorff stated that he would be willing to work with Ms. Vida in developing a media plan. Commissioner Kingsley stated that she would also consider working with staff on this project.

Commissioner Melbostad stated that the press needs accurate information about the types of complaints over which the Commission has jurisdiction. He also stated it is important that the press and the public are informed that the Commission did not enact the complaint process. Commissioner Kingsley stated that by educating the media, the public would also benefit and hopefully the Commission would receive higher quality complaints.

Commissioner Dockendorff reported that staff had invited him to meet with Netfile, a company that is interested in providing the Commission with services for online filing of campaign finance reports. He stated that such online filing allows for the data to be posted immediately to the Commission's website.

Campaign Finance Officer Joe Lynn explained that compliance with the current electronic filing requirements has proven to be very difficult due to technical problems associated with software and Excel templates being used to file in the required format. He noted that Netfile has agreed to provide a demonstration of its program with the participation of one local electronic filer.

Ms. Vida stated that the Commission has a continuing $25,000 work order for DTIS for ongoing maintenance of the Commission's website and that the Mayor's office recently provided the Commission with an additional $10,000 to develop a database for the electronic filing project. She told the Commission that online filing with Netfile as provider would probably cost the Commission $25,000 in start-up fees and $7,000 a month in maintenance fees. She noted that while the costs may appear high to the Commission, other jurisdictions are currently spending that amount or more on such programs.

Commissioner Dockendorff stated that if the online filing is a viable product, the costs of such a program will probably be the same as the costs of the current program.

Commissioner Melbostad stated that he had received a letter noting how helpful Campaign Finance Officer Joe Lynn has been with respect to assisting electronic filers. Ms. Vida noted that Mr. Lynn has spent many hours assisting filers with their reports.

**VIII. Discussion and Possible Action re: Approval of Proposed San Francisco Ethics Commission Audit Manual**

Ms. Vida stated that the Commission's auditor, Shaista Shaihk, prepared an initial draft of the audit manual prior to going on leave, and that Ms. Shaihk's temporary replacement, Armando Gomez, has implemented several revisions and prepared the draft manual under consideration today. Ms. Vida said that the manual had been reviewed by the Audit Supervisor of the Franchise Tax Board. The following motion was approved by unanimous vote:

**Motion 98-08-20-40 (Melbostad/Kingsley) Moved, seconded and passed: That the San Francisco Ethics Commission Audit Manual be approved.**

**IX. Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999**

Deputy Executive Director Naomi Starkman stated that at the Commission's July 22, 1998 meeting, staff presented to the Commission a two-tiered fee schedule proposal. She noted that the members of the Commission had directed staff to determine whether any of the estimated costs of administering the Ordinance could be reduced. Ms. Starkman stated that after reviewing its initial analysis, staff determined that some of the original estimated costs could be reduced.

Ms. Starkman noted that, in determining appropriate campaign consultant registration and client fees, staff had weighed the following competing interests: 1) covering the cost of administration of the program; 2) charging fees that are reasonable in light of the low qualification threshold; 3) recommending fees that are not so high that the Board of Supervisors and the Mayor would decline to approve them. She stated that because the threshold for qualifying as a consultant is low, staff had originally recommended a two-tiered fee schedule. She stated that staff now recommends a flat fee for all consultants for a period of one year, with a provision that the fees be reassessed before carrying over to future years. This flat fee is based on the $300 registration fee and $50 client fee currently paid by lobbyists. Ms. Starkman explained that after one year, the staff will be able to determine whether and how the fees should be adjusted based upon a year's actual experience in administering the Ordinance.

Ms. Starkman stated that although the staff is not in favor of implementing a tiered fee schedule, at its July 22 meeting the Commission expressed interest in creating a possible third tier fee for top-earning consultants. For discussion purposes, staff provided the Commission with such a proposal. Under the proposal, if a campaign consultant earns more than $1,000, but less than $5,000 in a calendar year, the filer would pay a $100 registration fee and a $50 fee per client. If a campaign consultant earns between $5,000 and $20,000 in a calendar year, the filer would pay a $300 registration fee and a $50 fee per client. If a campaign consultant earns more than $20,000 in a calendar year, the filer would pay a $500 registration fee and a$50 fee per client. Ms. Starkman noted that the staff believes that a three-tiered fee schedule would be extremely difficult and costly to administer. In addition, if the upper tier is higher than the fees charged in connection with the Lobbyist Ordinance, the Board of Supervisors and the Mayor may decline to approve such a tiered fee schedule.

Mr. Sheehy stated that although he had been opposed to the $1,000 qualification threshold, in his opinion, the proposed fees are inconsistent with Prop G. He said that Larry Bush wrote this Ordinance and that his intent was to get more money from the big consultants. He asked why staff

did not consider a $2,000 fee for the higher earning consultants. He said that a consultant at the higher end of the scale should not pay the same amount as a low-earning consultant. Mr. Sheehy recommended a tiered system that would tax the higher earning consultants. He recommended a $5,000 fee for those consultants.

Commissioner Dockendorff stated that perhaps the Commission could consider a $50 client fee and a graduated registration fee schedule of $50, $500, and $1,000.

Commissioner Kingsley stated that the registration fees cannot constitute a tax. She explained that there are legal limitations on how much the Commission can charge consultants. She said that the fee is supposed to be reasonably related to cost of administration and that a $5,000 fee for higher earning consultants could appear to be a tax.

Commissioner Melbostad stated that the Commission has a strict mandate to try to recommend fees to the Board of Supervisors. He stated that the Commission owes a duty to the voters to try to make the program pay for itself, but he stated that the fees could not appear to be a tax. He asked staff to recalculate another fee schedule.

David Spero agreed with Mr. Sheehy that the proposed fees appeared to be punitive to low-earning filers. He stated that as a petition gatherer, he must pass his earnings onto his employees. He stated that his profit margin is very slim.

Mr. Sheehy stated that the Commission could charge filers for advice and questioned whether it would take staff the same amount of time to audit a higher-earning consultant as it would take to audit a lower-earning consultant.

Ms. Starkman explained that because staff has not yet undertaken a formal audit, it was too difficult to provide an answer to that question at this time. She stated that this is just an example how difficult it is to determine the costs associated with the program, when the staff has not had enough experience with it. She stated that after one year's experience, the Commission will have obtained hard data on who the campaign consultants are, the actual cost of administration, and the actual impact of the fees on the filers. She stated that staff does not favor charging low-income filers a $300 registration fee, but that the proposed fee will at least generate revenue to offset the costs of the program for one year and staff will be able to assess the need for any adjustments by the end of that year.

Commissioner Henri E. Norris asked Mr. Sheehy to submit his suggestions in writing by August 31. Ms. Vida noted that if the Commission fails to recommend fees to the Board of Supervisors in a timely manner, it could forego the opportunity to impose any fees for the entire 1999 calendar year. After some discussion, the Commission decided to continue this matter until the next meeting and agreed that it will vote on this matter then. Commissioners Melbostad and Kingsley agreed to work with staff on a fee proposal.

**X. Discussion and Possible Action re: Comments by Common Cause re: Proposed Amendments to the Lobbyist Ordinance**

Charles Marsteller of Common Cause thanked staff for preparing a memorandum in response to recommendations proposed by his organization regarding proposed amendments to the Lobbyist Ordinance. He discussed Common Cause's recommendations in the following order:

Section 16.521(j)(1)(A)(i) (page 6, line 13)

This subsection proposes to increase the qualification threshold as a lobbyist from $1,000 in payments received or expenditures made in a calendar month to $4,200 in payments or expenditures per calendar quarter.

Mr. Marsteller stated that the Commission's authority to raise the qualification threshold is rooted in Proposition K, which took effect in January 1994. Because the CPI requirements were enacted through Prop. K, he recommended that the Commission raise the qualification threshold in accordance with the Consumer Price Index (CPI) for the last four years, rather than calculating the CPI from 1988 as the Commission has proposed. He estimated that adjusting the CPI from 1994 would result in lowering the proposed threshold from $4,200 to $3,200.

Ms. Starkman explained that there is nothing in the Charter limiting or prescribing the Commission's authority to adjust the qualification threshold for lobbyists. She noted that the Charter intended to provide an administrative mechanism for bringing ordinances up to date and that it does not purport to limit the Commission's authority to adjusting the threshold based on the changes in the CPI since 1994.

Mr. Marsteller stated that it would be dangerous precedent for the Commission to adjust the threshold based on the 1988 Ordinance. When asked by Ms. Vida to further clarify why he thought this would constitute a dangerous precedent, Mr. Marsteller stated that the Commission might be forced to adjust other thresholds in a similar manner. Ms. Vida stated that the Commission has been advised that its proposal to adjust the threshold from 1988 is legally sound. She noted that the Commission could, in the alternative, adjust for the CPI by raising the monthly threshold to $1,400.

Commissioner Melbostad stated that raising the threshold to $3,200 per quarter would be a good compromise, without sending the wrong message that the Commission was allowing lobbying activity to go unreported. Commissioner Dockendorff agreed with the suggestion to tie the threshold to the enactment date of Prop. K. The following motion was approved by unanimous vote:

**Motion 98-08-20-40 (Melbostad/Dockendorff) Moved, seconded and passed: That the Lobbyist Ordinance be amended to increase the threshold for contract and expenditure lobbyists from $1,000 in a calendar month to $3,200 in a calendar quarter.**

Section 2(a)(b)(c)(d) (page 31, line 20) - Transitional Provisions

This section includes transition provisions to implement the amendments set forth in Section 1 of the Lobbyist Ordinance. Section 2(c) allows a lobbyist to file a Lobbyist Termination Statement without first ceasing all lobbyist activity if the lobbyist would not qualify as a lobbyist based on the proposed increased activity thresholds.

Mr. Marsteller stated that the transition provisions give the appearance of retroactive termination and that Section 2(c), in particular, might have unintended consequences. On that basis, he recommended deleting this section in its entirety.

Ms. Starkman explained that lobbyists are required to continue to report their activity until they terminate their status. She noted that this section clarifies that if lobbyists do not meet the proposed threshold, the lobbyists may terminate their status. She stated that if a person or entity no longer qualifies as a "lobbyist" (because the person or entity no longer earns/spends the requisite amount of

money or has the requisite contacts), the person/entity is not required to register or report his/her/its activity. She noted that this section may not be necessary.

Anita Mayo of Pillsbury, Madison and Sutro stated that the transitional provisions are important because under the current Ordinance, if a person's activity falls below the qualification threshold, that person must continue to file reports with the Commission until s/he ceases all lobbyist activity. She stated that the transitional provisions would allow such persons to continue lobbying activity that falls below the qualification threshold without having to continue to file with the Commission.

Commissioner Dockendorff suggested that if the section is not essential, the Commission should remove the language from the Ordinance and include instructions in the Lobbyist Manual. The following motion was passed by unanimous vote:

**Motion 98-08-20-41 (Dockendorff/Melbostad) Moved, seconded and passed: That the proposed amendments to the Lobbyist Ordinance be amended to remove the transitional provisions and to include instructions in the Lobbyist Manual regarding termination of one's status as a lobbyist based on the proposed threshold.**

Section 16.521(c) (page 3, line 4)

This section would define the term "client" as the "party for whose benefit lobbyist services are performed," including the individual lobbyist of a business or organization lobbyist. It also clarifies that members of organizations would not be considered clients based on the members' payment of membership fees.

Mr. Marsteller stated that the proposed definition of the term "client" gives the appearance that the Commission is singling out unions and that it may also have unintended consequences. He recommended that the Commission clarify and/or simplify the definition of "client."

Ms. Starkman stated that this subsection clarifies who a "client" is for purposes of the Ordinance and provides: "A member of an organization shall not be deemed to be a "client" of the organization solely because the member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization and so long as such member does not pay for such representation in addition to the usual membership fees." She stated that this section does not single out union members in any special way, other than to clearly explain that a member of a union is not a client for purposes of the Ordinance if that member's regular membership fees are used to represent the member. She noted that other organizations, such as the Chamber of Commerce and Committee on Jobs also have members.

Mr. Marsteller stated that this section should include a requirement that clients report contributions made in excess of membership fees.

Ms. Mayo stated that this language is not new and that she has always questioned the language of this section. She recommended deleting this particular portion of the section.

The Commission did not reach a decision on this provision.

Section 16.521(d)(1)(f) (page 4, line 10)

This section would exempt from the definition of contact a person providing written information in

response to a request for information by a City officer. It would also require that the information provided to the officer include a statement at the top of the page stating the purpose for providing such information and stating that the information shall be available to the public on request.

Mr. Marsteller stated that the proposed required statement is inadequate to insure public disclosure. He recommended requiring disclosure of this information specifically to the Ethics Commission for purposes of public access.

Whistleblower/Educator Peggy Ahn stated that the purpose of this subsection is to exclude persons/entities from qualifying as lobbyists if their only activity consists of responding to requests for information from a City officer. She questioned whether the Commission could require that non-lobbyists disclose to the Commission any written information provided in response to a request for information by a City officer.

Mr. Marsteller suggested that persons or entities who qualify as lobbyists based on other activity could disclose that such a document was provided to a City officer.

Robert McCarthy of McCarthy & Schwarz stated that he currently discloses such activity in his quarterly lobbyist reports.

The Commission did not reach a decision on this provision and decided to continue this matter to the next meeting.

**XI. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature**

The Commission decided to continue this matter to the next meeting.

**XII. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session**

**Motion 98-08-20-41 (Dockendorff/Melbostad) Moved, seconded and passed: That the Commission conduct a closed session.**

The Commission adjourned into closed session.

**XIII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**Conference with Legal Counsel: Anticipated Litigation as Plaintiff**

**Number of possible cases: 1**

At the conclusion of the closed session, the Commission adjourned to public session.

**XIV. Discussion and vote as to whether to disclose deliberations conducted in closed session.**

The following motion was passed by unanimous vote:

**Motion 98-08-20-41 (Kingsley/Melbostad) Moved, seconded and passed: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XV. Discussion and Possible Action re: Items for Future Agendas**

There were no items for discussion.

**XVI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XVII. Adjournment**

The meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Naomi Starkman

Deputy Executive Director

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*09/15/98*

Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA

for

Monday, September 14, 1998, 5:30 p.m.
401 Van Ness Avenue, Room 207

## PLEASE NOTE CHANGE IN MEETING TIME AND LOCATION

I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of August 20, 1998

IV. Chairperson's Report

V. Commissioners' Reports

VI. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

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VII. Discussion and Possible Action: Adoption of rules/policy pertaining to public comment at Ethics Commission meetings

VIII. Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999

IX. Discussion and Possible Action re: Comments by Common Cause re: Proposed Amendments to the Lobbyist Ordinance (see enclosed Legislative Summary)

X. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature

XI. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

XIII. Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

(Please turn over for page 2)

XIV. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XV. Discussion and Possible Action re: Items for Future Agendas

XVI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XVII. Adjournment

*Know Your Rights Under the Sunshine Ordinance*

*Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.*

*For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force at 554-6075.*

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*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code §16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 703-0121 and web site http://www.ci.sf.ca.us/ethics/*

*s:agenda/ag091498.doc*

FILE NO. _____ ORDINANCE NO. _____

[Regulation of Lobbyists]

AMENDING ARTICLE XIIA OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 16.520 THROUGH 16.534 TO: ADD LEGISLATIVE FINDINGS; CLARIFY DEFINITIONS AND ADD NEW DEFINITIONS; CONSOLIDATE THE DEFINITION OF "LOBBYIST" WITH THE THRESHOLDS FOR QUALIFYING AS A LOBBYIST AND THE EXEMPTIONS; INCREASE THE QUALIFICATION THRESHOLD FOR CONTRACT LOBBYISTS FROM $1,000 PER MONTH TO $4,200 PER QUARTER; INCREASE THE QUALIFICATION THRESHOLD FOR EXPENDITURE LOBBYISTS FROM $1,000 PER QUARTER TO $4,200 PER QUARTER; CLARIFY AND ADD NEW EXEMPTIONS; CLARIFY THAT ONCE A PERSON QUALIFIES AS A "LOBBYIST" THE PERSON IS SUBJECT TO THE REQUIREMENTS AND PROHIBITIONS OF THIS ARTICLE UNTIL THE PERSON CEASES ALL LOBBYIST ACTIVITY AND FILES A STATEMENT OF TERMINATION; REQUIRE THAT LOBBYISTS REPORT CONTACTS WITH AND PAYMENTS THAT BENEFIT CERTAIN DESIGNATED EMPLOYEES AS WELL AS CITY OFFICERS; CLARIFY THE DISCLOSURE REQUIREMENTS APPLICABLE AT THE TIME OF REGISTRATION AND AT THE TIME OF FILING QUARTERLY ACTIVITY REPORTS; PROVIDE THAT ALL LOBBYISTS RE-REGISTER ON JANUARY 15 OF EACH YEAR; REQUIRE LOBBYISTS TO DISCLOSE PAYMENTS RECEIVED FROM CITY OFFICERS IN EXCHANGE FOR CAMPAIGN CONSULTING SERVICES; LIMIT THE AGGREGATE VALUE OF GIFTS FROM LOBBYISTS TO EACH CITY OFFICER AND TO CERTAIN DESIGNATED EMPLOYEES, WITHIN THREE MONTHS OF A LOBBYIST CONTACT, TO $50; PROHIBIT LOBBYING ON A CONTINGENCY FEE BASIS; REQUIRE LOBBYISTS TO NOTIFY CITY OFFICERS AND DESIGNATED EMPLOYEES OF THE VALUE OF GIFTS CONFERRED; LIMIT POLITICAL CONTRIBUTIONS BY LOBBYISTS; AND ADD TRANSITION PROVISIONS FOR IMPLEMENTATION OF THESE AMENDMENTS.

Common Cause Recomendations re: SF Lobbyist Amendments 06.08

| CC# | Common Cause (Memo 05.11.98) | Ethics (Letter 05.27.98) | Legislative Analyst (2ndDra |
|---|---|---|---|
| I.b. | Gift Reporting (Section 16.521(a), pg.2) | | |
| | Disclose? pg.1 | Disclose? pg.2 | Disclose? pg.9 |
| | Note: All agree that the Commission can consider disclosure of all gifts in any amount. | | |
| I.c.1 | Activity Reporting (Current Ordinance, see Ethics p.2 for citations) | | |
| | Disclose? pg.1 | Discloses pg.2 | No Comment -- ; |
| | Note: The Ethics response (pg.2) illustrates the complexity of compliance & administration/auditing. Electroc Filing (if funded/implemented) may help, but wouldn't disclosure of all activity simplify the process thus relieve the administrative burden on both the lobbyist and the City? | | |
| I.c.2 | Partners/Clients Activity (Section 16.521(a), pg.2) | | |
| | Disclose? pg.1 | Discloses pg.3 | No Comment -- |
| | Note: Ordinance (page 13) and amendments (page 2) does require disclosure of Partner/Client activity. | | |
| II: | Contacts by Experts (Section 16.521(d)(1)(L), pg.5) | | |
| | Disclose? pg.1 | Discloses pg.3 | Disclose? pg.8 |
| | Note: Common Cause recommends Commission action to disclose contacts by experts. | | |
| III. | Contract Amendments (Section 16.521 (d)(1)(O), pg.5) | | |
| | Clarify? pg.1 | Clear pg.3 | No Comment -- |
| | Note: Common Cause recommends definition of the terms in-scope/out-of-scope contracting if these are the terms which denote contract amendments. | | |
| IV.a. | Qualifying Threshold (Section 16.521 (j)(I)(A)(i), pg.7) | | |
| | $3,000 + CPI? pg.2 | $4,200.00 pg.3 | $3-4,200? pg.6-7 |
| | Note: CPI requirements enacted in Prop K (Nov.1993). Thus CPI adjustment need only be for last four years CC recommends conversion of the present $1,000/mo threshold to a quarterly system ($3,000) + CPI (four yrs) | | |
| IV.b. | Registration Fee (Current Ordinance) | | |
| | Revisit?. pg.2 | Threshold pg.3 | Sliding Scale? pg.6 |
| | Note: A $3,000 + CPI threshold should render moot the question of relief for low-income registrants. However, CC recommends that the Commission revisits this issue again at a future meeting. | | |
| V. | Gift Limits (Section 16.523(a), pg.2) | | |
| | Not Covered pg.2 | Covered pg.4 | See Chart pg.9 |
| | Note: Due to the absence of our counsel, we would like to pass on our discussion of this matter at this time | | |
| VI. | Campaign Contributions (16.523(b), pg.25) | | |
| | See 06.08.98 letter | stringent pg.4 | constitutional? pg.10 |
| | Note: No further discussion of this matter is necessary. | | |

Common Cause Recomendations re: SF Lobbyist Amendments



NEW ITEMS:

VII. Transitional Provisions (Section 2.(a)(b)(c)(d), pg.31-2)
Delete as unnecessary? -- -- unclear effect pg.5

Note: Provision (c), in particular, may have unintented consequences.

VIII: Client Definition (Section 16.521(c), pg.3)
Clarify/Simplify? -- -- -- --

Note: Reminicent of Prop 226, this item gives the appearance of singling out a specific group while it n also have unintended consequences.

IX: Communications (Section 16.521(d)(1)(f), p.4)
Disclose to Ethics/Clerk? -- -- -- --

Note: Simple declaration on the document itself is inadequate to insure public disclosure.

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**(Approved as Amended 10/13/98)**

**Minutes of the**
**San Francisco Ethics Commission Meeting**
**401 Van Ness Ave., Room 207**
**September 14, 1998, 5:30 p.m.**

**I. Call To Order and Roll Call:** Commission Chair Isabella H. Grant called the meeting to order at 5:40 p.m. The following were present:

COMMISSIONERS PRESENT: Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Carol M. Kingsley, Commissioner; Paul H. Melbostad, Commissioner. Commissioner Robert D. Dockendorff was absent as excused.

STAFF PRESENT: Naomi Starkman, Deputy Executive Director; Peggy Ahn, Whistleblower/Educator; Armando Gomez, Acting Campaign Finance Auditor; Chad Jacobs, Legal Intern; Joe Lynn, Campaign Finance Officer.

OFFICE OF THE CITY ATTORNEY: Burke Delventhal, Claire Sylvia, Deputy City Attorneys.

OTHERS PRESENT: Bob Boileau, S.F. Labor Council; Jason Kaune, Nielsen, Merksamer; Anita Mayo, Pillsbury, Madison and Sutro; Debra Stein, CGA Strategies; David Pilpel, Sunshine Ordinance Task Force; Charles Marsteller, California Common Cause.

MATERIALS DISTRIBUTED:

SF Ethics Commission Agenda, September 14, 1998
Approved as Amended Minutes of the SF Ethics Commission: Meeting July 22, 1998
Approved as Amended Minutes of the SF Ethics Commission: Special Meeting July 27, 1998
Draft Minutes of the SF Ethics Commission: Meeting August 20, 1998
Executive Director's Report, September 14, 1998
Letter from Libby Denebeim to Executive Director Ginny Vida, September 11, 1998
Memorandum from Campaign Finance Officer Joe Lynn to Executive Director Ginny Vida re: Electronic Filing Procedures
Whistleblower Hotline Tracking Chart, September 11, 1998
Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Public Comment Rules/Policy, September 14, 1998
Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Proposed Amendments to Campaign Consultant Ordinance, September 14, 1998
Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Proposed Amendments to the Campaign Consultant Ordinance, August 17, 1998
Common Cause's Recommendations re: Amendments to the Lobbyist Ordinance, June 8, 1998
Letter from Common Cause to San Francisco Ethics Commission re: Lobbyist Amendments, May 11, 1998
Proposed Amendments to the Lobbyist Ordinance, April 27, 1998
Memorandum from Executive Director Ginny Vida to Ethics Commission Members re: Regulation of Campaign Materials, September 11, 1998

Letter from Common Cause to Commissioner Henri Norris, August 19, 1998
Letter from Statecraft President Sheryl White to Executive Director Ginny Vida, August 31, 1998
Letter from CGA Strategies President Debra Stein to Director of Human Resources Andrea Gourdine Re: Inventory of Department Employees, September 10, 1998
Press Release from the New York Campaign Finance Board re: Campaign Contribution Database, August 3, 1998

II. **Public Comment Re:** Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.

Bob Boileau, of the S.F. Labor Council, stated that the Ethics Commission's proposed rules limiting public comment should not apply to meetings with small attendance.

Mr. Boileau also stated that he has reviewed the current and previous versions of the Lobbyist Manual. Mr. Boileau noted that the word "union" is present in the current manual but not in the previous version. Mr. Boileau stated that he believed the word "union" was added so the manual would comply with the proposed amendments to the Lobbyist Ordinance. Mr. Boileau stated that he would like the Commission to direct the staff to remove the word "union" from the Lobbyist Manual until it has been determined whether unions are covered under the Lobbyist Ordinance.

Commission Chair Isabella H. Grant stated that the Commission has always held that unions are covered by the Lobbyist Ordinance and that the Manual and the proposed revised Ordinance make that position clear. In response to an inquiry from Commissioner Paul H. Melbostad, Deputy City Attorney Claire Sylvia stated that the Commission has the authority to interpret the Ordinance and may include such interpretation in the Lobbyist Manual. Commissioner Melbostad requested that Mr. Boileau prepare a written response to the Commission as to what activities his union engages in and why he believes his union is not covered under the Lobbyist Ordinance.

Charlie Marsteller, representing Common Cause, stated that although his August 19 letter was addressed to Commissioners Norris and Melbostad, it was intended for all of the Commissioners.

David Pilpel, of the Sunshine Ordinance Task Force, asked whether the Commission had taken formal action to appoint Naomi Starkman as Deputy Executive Director. Ms. Starkman explained that her position was reclassified through the budget process. Mr. Pilpel also stated that sections VIII through X of the Agenda only describe a partial course of action. Mr. Pilpel suggested that the Commission should further explain these sections.

III. **Discussion and Possible Action Re:** Approval of minutes of the meetings of August 20, 1998.

Motion 98-09-14-42 (Melbostad/Norris) Moved, seconded and passed: That the minutes of the August 20, 1998 meeting be approved.

IV. **Chairperson's Report.**

There was no report from the Chairperson.

V. **Commissioners' Reports.**

Commissioner Melbostad stated that he had a discussion with a volunteer of a committee regarding the use of the Excel template to comply with the Electronic Filing Ordinance.

Commissioner Melbostad noted that the Excel template is cumbersome and not easy to use.

Campaign Finance Office Joe Lynn stated that prior to February of 1998, the Commission had not required a specified format for electronic filing. Mr. Lynn stated that he knows of only two political software vendors that offer the required format, but their software is expensive. He explained that due to the high cost of the software, the Commission had adopted the free Excel template. Mr. Lynn stated that currently the Commission is assessing the costs of developing a program that is easier to use.

Commissioner Melbostad asked whether there were funds in the Commission's budget to purchase the software for local filers. Mr. Lynn said that copyright laws would require the Commission to purchase a license for each user, which at $795 per license would make the cost prohibitive.

Mr. Lynn also stated that he has been in discussion with Positive Resource, a non-profit organization, to train four individuals to use the Excel template. Campaigns could hire these individuals to assist in completing the Excel template. Mr. Lynn noted that 34 committees have successfully used the Excel template. Staff time to process a template filing involved a minimum of 30 minutes to a maximum of eight hours per filer. Accordingly, the staff will not impose fines for the late filing of electronic disks as long as the campaign demonstrates a good faith effort to comply with the electronic filing ordinance. However, the Commission will continue to impose late fines with respect to the filing of the hard copies of the FPPC-mandated campaign statements.

Commissioner Melbostad stated that the Commission should prepare supplemental budget requests for additional clerical help.

**VI. Executive Director's Report.**

Ms. Starkman reported that Executive Director Ginny Vida is attending the annual conference of the Council on Governmental Ethics Laws in Seattle.

Commission Chair Grant stated that she had received a letter noting how helpful Mr. Lynn had been in assisting filers with their electronic filings.

Mr. Lynn reported that only one of the individuals who file annual Statements of Economic Interest with the Ethics Commission has failed to do so.

**VII. Discussion and Possible Action: Adoption of rules/policy pertaining to public comment at Ethics Commission meetings.**

Commissioner Grant stated that there was no need to make a decision regarding limiting public comment at this time.

Mr. Pilpel noted that the Redevelopment Agency's Rules and Regulations included in the memorandum from Ginny Vida regarding this matter are not in compliance with the Brown Act and Sunshine Ordinance.

**VIII. Discussion and Possible Action: Campaign Consultant Registration and Client Fees to be proposed by the Ethics Commission for referral to the Board of Supervisors, for implementation in 1999.**

Commissioner Grant stated that it is very important that the Commission reach a decision on this matter so that the Commission can forward its recommendation to the Board of Supervisors.

Commissioner Carol M. Kingsley stated that the cost of administration of this program has been estimated at $39,822, or $796 per campaign consultant and $175 per client. Commissioner Kingsley stated that the Commission has an obligation to the voters to make this a self-supporting program. For this reason, she recommended that the Commission approve staff's second proposal.

Ms. Starkman explained that staff's second proposal would impose a tiered fee schedule on filers. For campaign consultants earning more than $20,000 per calendar year, the registration fee would be $796 and the client fee would be $175 per client, which are the costs per consultant of administering the campaign consultant program. The fees would be reduced for campaign consultants who earn less. Those campaign consultants who earn more than $5,000, up to and including $20,000, per calendar year would pay a $300 registration fee and a $100 client fee. Those campaign consultants who earn $5,000 or less per calendar year would pay no registration fee and $50 per client.

Commission Chair Grant suggested that the Commission review the program and the fees after a period of one year.

*Anito Mayo, Exp., Pillsbury, Madison & Sutro requested clarification of the tiered fee structure. Ms. Mayo asked whether a filer earning $5,000 would fall into a lower or higher tier. Staff said they would consider this matter. Ms.* Anita Mayo of Pillsbury, Madison and Sutro *also* inquired as to the amount filers would pay if they earn under $1,000. Ms. Starkman explained that an individual must earn $1,000 or more in a calendar year to qualify as a campaign consultant.

Mr. Marsteller asked the Commission whether it had considered whether this proposal resembled a tax. Commission Chair Grant stated that the Commission had considered that issue.

**Motion 98-09-14-43 (Melbostad/Kingsley) Moved, seconded and passed: That the Ethics Commission propose Campaign Consultant Registration and Client Fees for referral to the Board of Supervisors for implementation in 1999, as follows: For filers earning more than $20,000 per calendar year, a registration fee of $796 and client fee of $175 per client. For filers earning more than $5,000, up to and including $20,000 per calendar year, a $300 registration fee and a $100 client fee. For campaign consultants earning $5,000 or less per calendar year, no registration fee and $50 per client.**

**Discussion and Possible Action re: Comments by Common Cause re: Proposed Amendments to the Lobbyist Ordinance.**

The Commission discussed Common Cause's recommendations as follows:

Section 16.521(c) (page 3, line 4)

This section would define the term "client" as the "party for whose benefit lobbyist services are performed," including the individual lobbyist or business or organization lobbyist. It also clarifies that members of organizations will not be considered clients based on members' payment of membership fees.

Commission Chair Grant stated that this definition is somewhat confusing. She recommended

deleting the second and third sentences. The definition would then read, "'Client' means the party for whose benefit lobbyist services are performed."

Mr. Bolieu recommended adding the words, "by a contract lobbyist" to the end of the sentence. Mr. Pilpel suggested substituting the word "person" for the word "party."

**Motion 98-09-14-44 (Melbostad/Norris) Moved, seconded and passed: That the Lobbyist Ordinance be amended to define the term "client" as "the person for whose benefit services are performed by a contract lobbyist."**

Section 16.521(d)(1)(f) (page 4, line 10)

This section would exempt from the definition of a "contact" a person providing written information in response to a request for information by a City officer. It would also require that the information provided to the officer include a statement at the top of the page stating the purpose for providing such information and stating that the information shall be available to the public on request.

Mr. Marsteller stated that the proposed required statement is inadequate to ensure public disclosure. He recommended requiring disclosure of this information specifically to the Ethics Commission. Ms. Starkman explained that a person who has not already qualified as a lobbyist would not be required to report this information. She explained that Mr. Marsteller's intent was to require that persons or entities who qualify as lobbyists based on other activity disclose that such a document is provided to a City officer.

Mr. Marsteller suggested that the Commission amend the lobbyist forms to provide a brief description of contacts. Debra Stein of GCA Strategies stated that having to report all her contacts would result in thousands of documents being produced by her office. She recommended that this item be deleted from the proposed amendments. Mr. Marsteller stated that it was not his intention to require reporting of all documents.

*Commissioner Melbostad requested that Ms Mayo to provide additional comments concerning the provisions of § 16.521 d (1 (f)).*

After some discussion as to whether to delete this provision, the Commission decided to continue this matter to the next meeting.

Section 16.521(a) (page 2, line 14)

This subsection would adjust from $20 per month to $30 in a consecutive three-month period the threshold for reporting activity expenses that benefit local officials.

Mr. Marsteller stated that several jurisdictions, including the State of California, require that "gifts" to officeholders in any amount be reported. He stated that Common Cause has recommended that the proposed threshold be removed altogether in order to obtain parity with State law, or, in the alternative, that the proposed $30 threshold be lowered even further.

Commission Chair Grant explained that unlike State law, which differs in many respects from the Ordinance, the Ordinance has always maintained a threshold for reporting activity expenses. She noted that the Commission decided to strengthen the current Ordinance by lowering the threshold

from $20 per month to an average of $10 per calendar month. She stated that this would result in increased reporting and that a lower threshold is not necessary because less than $10 per month would not purchase undue influence.

Whistleblower/Educator Peggy Ahn stated that it might prove to be an administrative burden for staff to have to report a multitude of small-cost items, such as a cup of coffee.

The Commission decided that it will not alter this section and directed staff to include clear examples in the Manual to explain how to report these activity expenses.

Section 16.521(d)(1)(L) (page 5, line 6)

This subsection provides that any expert retained by a lobbyist to provide information to a City officer or designated employee is exempt from the definition of a "contact."

Mr. Marsteller noted that Common Cause believes it is not appropriate to exempt from the definition of a "contact" an expert retained by the lobbyist to provide information to an officer or designated City employee because the expert is part of an advocacy program and the expense should be reportable.

Ms. Starkman explained that staff has previously noted that the proposed amendments do require that payments to such experts be reported. Section 16.521(o)(5) clearly states that if a lobbyist employs or retains an expert to provide information to a City officer, the lobbyist must report any payments made to such expert for providing those services.

The Commission decided that it would not alter this section and directed staff to include clear examples in the Manual.

The Commission concluded its discussion of Common Cause's recommendations.

Ms. Stein stated that she is concerned about the proposed restriction on political contributions. She said that such a provision prohibited her and other lobbyists from participating in the democratic process. Ms. Stein stated her concern about the proposed ban on contingency fees. She stated that if the Commission had no evidence of problems being caused by the payment of contingency fees to lobbyists, it should not regulate such conduct. Finally, Ms. Stein stated that she is concerned about the Commission's proposal to require lobbyists to report contacts made with designated City employees. She explained that she currently reports all contacts with City officials and department heads. She stated that requiring lobbyists to report contacts with designated City employees would dramatically increase her reporting requirements. She suggested that if the Commission intends to require such reporting it should also provide a list of the names of each designated City employee and update that list on a monthly basis.

Ms. Starkman explained that the proposed amendments to the Lobbyist Ordinance would redefine "activity expenses" to include payments that benefit designated City employees, defined as those employees who are identified in the City's Conflict of Interest Code as persons who participate in policy making and who must therefore file periodic statements of economic interests (SEIs). Ms. Starkman stated that because designated City employees are in a position to make or participate in making significant policy decisions, payments benefiting them should be reported. She noted that some lobbyists already voluntarily report contacts with designated City employees. The fact that these contacts are occurring prompted the Commission to recommend capturing contacts made by

lobbyists with designated City employees. Ms. Starkman explained that lobbyists must only report contacts with designated City employees that are for the purpose of influencing administrative or legislative action. Routine contacts with City employees for status reviews would not be deemed lobbying for purposes of the Ordinance.

Ms. Stein suggested that the Commission leave to the discretion of the department head the decision as to who is in a position to make an influential decision.

Mr. Pilpel recommended that the Commission only require that lobbyists report contacts with City employees who are required to file their Statement of Economic Interests with the Commission.

Commissioner Melbostad requested staff to report back to the Commission with examples of influential City employees not covered by the current definition of the term "officer" who would be covered under the new proposal.

**IX. Discussion and Possible Action re: Proposed legislation relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature.**

The Commission reviewed proposed legislation prohibiting misrepresentation of the views of political entities, candidates and public officials on campaign mailers and other campaign literature. Commissioner Melbostad explained that the most recent version of this legislation has been narrowly drawn to withstand constitutional challenges.

Commissioner Kingsley offered language to clarify the last sentence of Section 16.542 to read, "A false endorsement is a statement, signature, photograph, or image falsely representing that a person endorses support of or opposition to a candidate or measure when in fact the person does not enforce support of or opposition to a candidate or measure as stated or implied in the campaign literature." The Commission approved this clarification.

**Motion 98-09-14-45 (Norris/Kingsley) Moved, seconded and passed: That the Ethics Commission refer to the Board of Supervisors the proposed legislation, as amended, relating to the prohibition of misrepresentation of the views of political entities, candidates and public officials on campaign mailings and other campaign literature.**

**X. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session.**

**Motion 98-09-14-46 (Norris/Kingsley) Moved, seconded and passed: That the Commission conduct a closed session.**

The Commission adjourned into closed session.

**XI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

**XII. Conference with Legal Counsel: Anticipated Litigation as Plaintiff**
**Number of possible cases: 1**

At the conclusion of its closed session, the Commission adjourned to public session.

**XIII. Discussion and vote as to whether to disclose deliberations conducted in closed session.>**

The following motion was passed by unanimous vote:

**Motion 98-09-14-47 (Melbostad/Kingsley) Moved, seconded and passed: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XIV. Discussion and Possible Action re: Items for Future Agendas.**

Commission Chair Grant stated that the next Commission meeting will be held on October 13. She stated that at that time, the Commission would like to review a revised draft of the Lobbyist Ordinance that includes those provisions which the Commission has agreed to. Commission Chair Grant stated that the Commission would like to consider amending the Charter to expand its jurisdiction. She said the Commission would also like to consider whether current laws are inadequate to address the types of conduct the Commission has seen in complaints. Following this review, the Commission would like to consider proposals for amendments to the City's ethics-related laws to address conduct not currently addressed by those laws.

**XV. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission.**

Mr. Pilpel asked for clarification as to the revised draft of the Lobbyist Ordinance. Commission Chair Grant noted that the revised version of the Lobbyist Ordinance will include all the amendments previously agreed to.

**XVI. Adjournment**

The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

Armando Gomez
Acting Campaign Finance Auditor

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Ethics Commission

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# SAN FRANCISCO ETHICS COMMISSION AGENDA

for

~~Monday~~ Tuesday, October 13, 1998, 5:00 p.m.
1390 Market St., Room 227 (Mezzanine level)

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I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of September 14, 1998, and approval of amendment to minutes of the meeting of January 12, 1998

IV. Commissioners' Reports

V. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VI. Proposed amendments to the Lobbyist Ordinance (See enclosed legislative summary.) A copy of the proposed amendments with the revisions previously approved by the Ethics Commission is included in the public agenda packet. This document is available from the Commission Office and is available on the Commission's Internet web site at http://www.ci.sf.ca.us/ethics/.

A) Discussion and Possible Action on Unresolved Issues:

1. proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure

2. proposed ban on contributions by lobbyists to political campaigns of City officers within three months of lobbying the official

3. proposed ban on lobbying on a contingency fee basis

4. proposed clarification that unions are subject to provisions of the Lobbyist Ordinance if they meet the qualification threshold, exclusive of collective bargaining

5. proposed amendment requiring a disclaimer notice on written information provided by a lobbyist to a City officer at the officer's request

B) Discussion and Possible Action re: Forwarding revised proposed Amendments to the Board of Supervisors

(Please turn over for page 2)

VII. Discussion and Possible Action re: Approval of FY 1997-98 draft Annual Report

VIII. General Discussion re: Whether current laws are inadequate to address the types of conduct the Commission has seen in complaints, consideration of proposals for amendments to the City Charter and ethics-related ordinances to address conduct not currently covered by those laws, and how the complaint process can be made more effective.

IX. Discussion and Possible Action re: Items for Future Agendas

X. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XI. Adjournment

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FILE NO. _____ ORDINANCE NO. _____

[Regulation of Lobbyists]

AMENDING ARTICLE XIIA OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 16.520 THROUGH 16.534 TO: ADD LEGISLATIVE FINDINGS; CLARIFY DEFINITIONS AND ADD NEW DEFINITIONS; CONSOLIDATE THE DEFINITION OF "LOBBYIST" WITH THE THRESHOLDS FOR QUALIFYING AS A LOBBYIST AND THE EXEMPTIONS; INCREASE THE QUALIFICATION THRESHOLD FOR CONTRACT LOBBYISTS FROM $1,000 PER MONTH TO ~~$4,200~~ $3200 PER QUARTER; INCREASE THE QUALIFICATION THRESHOLD FOR EXPENDITURE LOBBYISTS FROM $1,000 PER QUARTER TO ~~$4,200~~ $3200 PER QUARTER; CLARIFY AND ADD NEW EXEMPTIONS; CLARIFY THAT ONCE A PERSON QUALIFIES AS A "LOBBYIST" THE PERSON IS SUBJECT TO THE REQUIREMENTS AND PROHIBITIONS OF THIS ARTICLE UNTIL THE PERSON CEASES ALL LOBBYIST ACTIVITY AND FILES A STATEMENT OF TERMINATION; REQUIRE THAT LOBBYISTS REPORT CONTACTS WITH AND PAYMENTS THAT BENEFIT CERTAIN DESIGNATED EMPLOYEES AS WELL AS CITY OFFICERS; CLARIFY THE DISCLOSURE REQUIREMENTS APPLICABLE AT THE TIME OF REGISTRATION AND AT THE TIME OF FILING QUARTERLY ACTIVITY REPORTS; PROVIDE THAT ALL LOBBYISTS RE-REGISTER ON JANUARY 15 OF EACH YEAR; REQUIRE LOBBYISTS TO DISCLOSE PAYMENTS RECEIVED FROM CITY OFFICERS IN EXCHANGE FOR CAMPAIGN CONSULTING SERVICES; LIMIT THE AGGREGATE VALUE OF GIFTS FROM LOBBYISTS TO EACH CITY OFFICER AND TO CERTAIN DESIGNATED EMPLOYEES, WITHIN THREE MONTHS OF A LOBBYIST CONTACT, TO $50; PROHIBIT LOBBYING ON A CONTINGENCY FEE BASIS; REQUIRE LOBBYISTS TO NOTIFY CITY OFFICERS AND DESIGNATED EMPLOYEES OF THE VALUE OF GIFTS CONFERRED; AND LIMIT POLITICAL CONTRIBUTIONS BY LOBBYISTS~~; AND ADD TRANSITION PROVISIONS FOR IMPLEMENTATION OF THESE AMENDMENTS~~.

Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

Revised

# SAN FRANCISCO ETHICS COMMISSION AGENDA

for

**Tuesday, October 13, 1998, 5:00 p.m.**
**1390 Market St., Room 227 (Mezzanine level)**

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I. Call To Order and Roll Call

II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

III. Discussion and Possible Action Re: Approval of minutes of the meeting of September 14, 1998, and approval of amendment to minutes of the meeting of January 12, 1998

IV. Commissioners' Reports

V. Executive Director's Report
A. Advice and Opinions issued
B. Updates
C. Projects and Activities

VI. Proposed amendments to the Lobbyist Ordinance (See enclosed legislative summary.) A copy of the proposed amendments with the revisions previously approved by the Ethics Commission is included in the public agenda packet. This document is available from the Commission Office and is available on the Commission's Internet web site at http://www.ci.sf.ca.us/ethics/.

A) Discussion and Possible Action on Unresolved Issues:

1. proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure
2. proposed ban on contributions by lobbyists to political campaigns of City officers within three months of lobbying the official
3. proposed ban on lobbying on a contingency fee basis
4. proposed clarification that unions are subject to provisions of the Lobbyist Ordinance if they meet the qualification threshold, exclusive of collective bargaining
5. proposed amendment requiring a disclaimer notice on written information provided by a lobbyist to a City officer at the officer's request

B) Discussion and Possible Action re: Forwarding revised proposed Amendments to the Board of Supervisors

(Please turn over for page 2)

VII. Discussion and Possible Action re: Approval of FY 1997-98 draft Annual Report

VIII. General Discussion re: Whether current laws are inadequate to address the types of conduct the Commission has seen in complaints, consideration of proposals for amendments to the City Charter and ethics-related ordinances to address conduct not currently covered by those laws, and how the complaint process can be made more effective.

IX. Discussion and Possible Action re: Items for Future Agendas

X. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XI. Adjournment

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FILE NO. _____ ORDINANCE NO. _____

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

REVISED 10/8/98 REVISED 10/8/98

# SAN FRANCISCO ETHICS COMMISSION AGENDA

**for**

**Tuesday, October 13, 1998, 5:00 p.m.**
**1390 Market St., Room 227 (Mezzanine level)**

**PLEASE NOTE ADDITION OF NEW ITEM VI. TO THE AGENDA**

I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meeting of September 14, 1998, and approval of amendment to minutes of the meeting of January 12, 1998**

IV. **Commissioners' Reports**

V. **Executive Director's Report**
- **A. Advice and Opinions issued**
- **B. Updates**
- **C. Projects and Activities**

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VI. **(NEW ITEM ADDED TO AGENDA) Discussion and Possible Action Re: Revising the Campaign Consultant Registration and Client Fees that were proposed by the Ethics Commission and referred to the Board of Supervisors for implementation in January 1999. The Finance Committee of the Board of Supervisors has requested that the Ethics Commission reconsider its campaign consultant fees proposal in light of the new data from the September filing and the concerns expressed by Finance Committee members about the projected cost of the program, projected revenues, and equitable distribution of the fee burden.**

VII. **Proposed amendments to the Lobbyist Ordinance (See enclosed legislative summary.) A copy of the proposed amendments with the revisions previously approved by the Ethics Commission is included in the public agenda packet. This document is available from the Commission Office and is available on the Commission's Internet web site at http://www.ci.sf.ca.us/ethics/.**

**A) Discussion and Possible Action on Unresolved Issues:**

1. **proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure**

**(Please turn over for page 2)**

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2. proposed ban on contributions by lobbyists to political campaigns of City officers within three months of lobbying the official
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B) Discussion and Possible Action re: Forwarding revised proposed Amendments to the Board of Supervisors

VIII. Discussion and Possible Action re: Approval of FY 1997-98 draft Annual Report

IX. General Discussion re: Whether current laws are inadequate to address the types of conduct the Commission has seen in complaints, consideration of proposals for amendments to the City Charter and ethics-related ordinances to address conduct not currently covered by those laws, and how the complaint process can be made more effective.

X. Discussion and Possible Action re: Items for Future Agendas

XI. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XII. Adjournment

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**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market St., Room 227**
October 13, 1998, 5:00 p.m.

1. **Call To Order and Roll Call.**

Commission Chair Isabella H. Grant called the meeting to order at 5:05 p.m. The following were present:

**COMMISSIONERS PRESENT:** Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Carol M. Kingsley, Commissioner; Robert D. Dockendorff, Commissioner. Commissioner Paul Melbostad was absent as excused.

**STAFF PRESENT:** Ginny Vida, Executive Director; Naomi Starkman, Deputy Executive Director; Peggy Ahn, Whistleblower/Educator; Shaista Shaikh, Campaign Finance Auditor; Chad Jacobs, Legal Intern; Joe Lynn, Campaign Finance Officer.

**OFFICE OF THE CITY ATTORNEY:** Julie Moll, Deputy City Attorney

**OTHERS PRESENT**: Leirion Gaylor, Mayor's Office of Finance and Legislative Affairs; Walter Johnson, San Francisco Labor Council; Bob Boileau, S.F. Labor Council; Jim Sutton, Nielsen, Merksamer; Anita Mayo, Pillsbury, Madison and Sutro; David Pilpel, Sunshine Ordinance Task Force; Charles Marsteller, California Common Cause; Phillip Crosby, Reuben & Alter; David Spero, Pacific Petition.

**MATERIALS DISTRIBUTED:**

SF Ethics Commission Agenda, October 13, 1998
Minutes of the SF Ethics Commission. Meeting, January 12, 1998
Approved as Amended Minutes of the SF Ethics Commission. Meeting August 20, 1998
Draft Minutes of the SF Ethics Commission. Meeting September 14, 1998
Executive Director's Report, October 13, 1998
Memorandum to Commission Members from Ginny Vida, Executive Director, re: Inclusion of Designated Employees dated October 8, 1998
Draft of Proposed Ordinance [Regulation of Lobbyists]
Letter from Anita Mayo, Pillsbury, Madison & Sutro, re: Exclusion from Definition of ~~Contract~~ *Contact* dated October 13, 1998
Article from the San Francisco Chronicle by Edward Epstein, "Supervisor's Fund-Raising Late but Great," dated October 7, 1998
Article from the San Francisco Examiner by Rachel Gordon, "Teng, Newsom lead in funds for campaigns," dated October 7, 1998

2. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

3. **Discussion and Possible Action Re: Approval of minutes of the meeting of September 14, 1998, and approval of amendment to minutes of the meeting of January 12, 1998.**

Anita Mayo of Pillsbury, Madison & Sutro, requested the minutes to reflect her September 14, 1998, comments to the Commission requesting clarification of the tiered campaign consultant fee structure, specifically whether a filer earning $5,000 would fall in the lower or the higher tier. She noted that the resolution as passed had clarified the matter. She also asked that the minutes be amended to reflect Commissioner Melbostad's request to her to provide additional comments concerning the provisions of §16.521 d (1) f. The Commission agreed to amend the minutes at her request.

**Motion 98-10-13-43 (Dockendorff/Norris) Moved, seconded and passed: That the minutes of the August 20, 1998 meeting be approved as amended.**

Ginny Vida, Executive Director, explained that there had been an error in the minutes of the January 12, 1998, meeting at page 4 which required the reference to the year being corrected from 1997 to 1998.

**Motion 98-10-13-44 (Dockendorff/Norris) Moved, seconded and passed: That the minutes of the January 12, 1998 meeting be approved as amended.**

4. **Chairperson's Report.**

Commission Chair Grant acknowledged and welcomed Professor James Sutton's class in Elections Law from Hastings College of the Law.

5. **Commissioners' Reports.**

There were no reports from the Commissioners.

6. **Executive Director's Report.**

Ms. Vida summarized her written report and welcomed back Campaign Finance Officer Shaista Shaikh, who had returned from a leave of absence. Ms. Shaikh thanked Naomi Starkman, Deputy Executive Director, and Armando Gomez, Acting Campaign Finance Auditor for their work on the Campaign Finance Audit Manual. She also reported that five ballot measure committees and five controlled committees had been randomly selected for audit. Given the need for her to perform both audit and clerical tasks, she estimated that each audit will take six to eight weeks. The audits will be conducted simultaneously. Ms. Shaikh has established contact with some of the auditees.

Ms. Vida also reported on the COGEL conference she had attended in Seattle. She stated that she had attended several meetings on electronic filing. Ms. Vida reported that COGEL has contracted with a nonprofit to develop a national standard electronic format which is expected to be approved by a Congressional subcommittee in November and made available to vendors in January 1999. Commissioner Robert Dockendorff stated his concern that the national standard is primarily in the interests of vendors. He stressed that the Commission pursue on-line filing via the Internet as a goal.

Ms. Vida also reported that the Rebecca Avila, Executive Director of the Los Angeles Ethics Commission had informed her of its development of an on-line filing program that the Los Angeles Ethics Commission expects to begin testing in December. At Ms. Avila's suggestion, the SF Ethics Commission staff and DTIS are exploring whether San Francisco might make use of this program. Campaign Finance Officer Joe Lynn stated that he had learned that the Los Angeles Ethics Commission employs two computer programmers on its staff.

7. **Discussion and Possible Action Re: Revising the Campaign Consultant Registration and Client Fees that were proposed by the Ethics Commission and referred to the Board of Supervisors for implementation in January 1999. The Finance Committee of the Board of Supervisors has requested that the Ethics Commission reconsider its campaign consultant fees proposal in light of the new data from the September filing and the concerns expressed by Finance Committee members about the projected cost of the program, projected revenues, and equitable distribution of the fee burden.**

Ms. Vida reported that on October 7 she and Whistleblower/Educator Peggy Ahn had appeared before the Finance Committee of the Board of Supervisors to present the three-tiered fee schedule approved by the Ethics Commission. The Finance Committee expressed a desire to approve a fee structure by the December 1 deadline but did not approve the one proposed by the Commission.

Ms. Vida reported that Barbara Kaufman, President of the Board of Supervisors, had expressed concerns that the proposed fees were too high, suggesting that it might be sufficient for the fees to cover 40 percent of the administrative costs of the program. Ms. Vida explained that the Commission had recommended a more substantial recovery of costs (85 percent) because the Controller's statement accompanying the ballot inititative indicated that costs of administration would be substantially covered by the fees imposed.

Ms. Vida also reported that Finance Committee Member Gavin Newsom had advocated that 100 percent of the costs be recovered through the fees. Finance Committee Chair Mabel Teng had noted that because this is a pilot program, an initial fee structure would be justified by which a lower percentage of costs would be recovered until the Commission has a better understanding of the actual costs involved.

Ms. Vida also said that the Mayor's office had offered to be of assistance with respect to this proposal. She noted that Leirion Gaylor from the Mayor's Budget Office was in attendance at today's Commission's meeting.

Ms. Vida said that Supervisor Kaufman had requested to meet with Deputy Executive Director Naomi Starkman to discuss the administration costs projected by the Commission; She noted that this meeting might take place during the week of October 19. Ms. Vida suggested that the Commission may wish to meet in the last week of October to review estimated costs in view of additional new data from the most recent filing of campaign consultants, data not available when the Commission adopted its recommendation. Preliminary analysis indicates that the presently recommended three-tier system may reap greater revenue because of increased earnings by the consultant as the year progresses.

Commissioner Carol Kingsley expressed concern that setting a meeting now may be tantamount to the Commission's agreeing to reconsider its earlier, well-considered position.

Commissioner Dockendorff suggested that some campaign consultants might try to delay a

decision so that no fees would be in place. He stated, however, that lower, interim rates such as suggested by Supervisor Teng might be the wise course to avoid missing the December deadline.

Commissioner Kingsley said that the responsibility for missing the deadline would fall not on the Commission but on the Finance Committee.

David Spero, a registered campaign consultant, objected to the proposed fee structure. He said that voters expected the City to finance the program. He objected to basing fees on gross income of the consultants without reference to the high field expenses they incur. A fair fee structure cannot be determined, he said, without referencing the net income. Ms. Vida noted that this concern had also been expressed by Supervisor Kaufman.

Commissioner Henri Norris emphasized that the Commission's task is to consider its own budgetary needs. It was suggested that the client could pay vendors and field workers directly for field expenses. Mr. Spero agreed that restructuring his fees was theoretically possible but said it would be too complicated to require a client to pay as many as 40 people in the field. Mr. Spero conceded that campaign consultants could pass the cost of the fees on to their clients.

Commissioner Kingsley questioned Mr. Spero's assumption that the voters had expected public financing of the program. She noted that ballot arguments expressly stated that the program would be self-funding. Mr. Spero said that his assumption was based on the arguments presented by the proponents of the measure to the political clubs.

James Sutton of Neilson Merksamer asked that future meetings of the Commission be set with elections in mind since political consultants are very busy at this time.

Commission Chair Grant, noting the December 1 deadline, said that the Commission would schedule a special meeting after receiving a report from staff on the meeting with Supervisor Kaufman.

**8. Proposed amendments to the Lobbyist Ordinance**

**1. Discussion and Possible Action on Unresolved Issues:**

**1. Proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure.**

Ms. Vida urged that lobbying contacts with City employees designated in Chapter 58 should be considered contacts for purposes of lobbyist qualification and disclosure. She noted that employees who file Statements of Economic Interests are by definition in a position to influence City policy. Without this amendment, she said, much lobbying activity will go unreported. She called upon Peggy Ahn, Whistleblower/Educator who summarized her report of October 8.

Ms. Mayo said it is too great a burden for a lobbyist to identify whether a City departmental staff member needs to be identified in a future disclosure report because his or her title is designated in Chapter 58. She noted that Chapter 58 does not identify the staff but only the positions that must file. She stressed that this activity is already being revealed in her clients' reports as compensated time even though the identities of the staff are not be reported.

In response to an inquiry by Commissioner Dockendorff, Mr. Lynn said that he did not know how many employees would be covered. He also said that there would be a tremendous burden on the staff to keep current any published list of such employees. Ms. Vida stated that in her view, it would not pose too great a burden for lobbyists to ask City employees whom they lobby if they occupy "designated" staff titles listed in Chapter 58.

Phillip Crosby, Reuben & Alter, stated that the information gathered by such a requirement would be marginally useful to the voter and would be far outweighed by the burden to the filer. He expressed concern that whether a contact must be reported is based on a subjective standard.

Ms. Mayo stated that the amount of money spent by a lobbyist in making a contact is information that is currently being disclosed. She said this disclosure is more important than the public's awareness of the identities of employees contacted.

Commissioner Dockendorff stated his concern that the Commission may be gathering data that the public would not use. It was his opinion such data gathering would be overreaching. He suggested a need to balance the public's need to know with the burdens the Ordinance might impose.

Commissioner Norris was not surprised that the public hasn't asked for the information which would be garnered by the Ordinance. She stated this is a pilot project in which any error by the Commission should be on the side of getting further information.

Deputy City Attorney Julie Moll stated that disclosure of contacts with employees who occupy designated titles in Chapter 58 would be important not only in determining what the lobbyists would report but also in determining whether one qualifies as a lobbyist. She suggested that the reporting form could simplify the burden on the lobbyist by indicating a range of contacts to be reported. Ms. Mayo told Commissioner Norris that such a range would be helpful.

Mr. Boileau stated that contacts concerning an employee's administrative tasks should not be considered lobbying. Ms. Starkman said those contacts are not subject to the proposal.

Mr. Crosby said that employees may be unreceptive to communicating with lobbyists for fear of have their names disclosed on a lobbyist report.

Mr. Boileau questioned whether a change order request would qualify as a lobbyist contact. Commissioner Dockendorff said he thought the City Attorney would need to interpret the ordinance to provide an answer to that question. Ms. Starkman said that the Commission, not the City Attorney, would be the arbiter.

Ms. Moll stated that it would be helpful to the Commission if members of the public could submit their objections to the proposal in writing.

Commission Chair Grant concluded that the consensus among the Commission members was to defer action on this matter until a future meeting.

**2. Proposed ban on contributions by lobbyists to political campaigns of City officers within three months of lobbying the official.**

Commission Chair Grant began the discussion with a reference to Proposition 208. Ms. Vida noted that the proposal was more narrowly drawn than Proposition 208, a fact that Mr. Marsteller

thought might strengthen the Ordinance against attack on constitutional grounds. He announced Common Cause's support of the provision.

Ms. Mayo outlined technical differences between the proposal and Proposition 208.

Mr. Pilpel suggested that for purposes of this Ordinance the Commission may wish to distinguish contract lobbyists from business and organization lobbyists.

Commissioner Dockendorff questioned whether a $500 contribution could be a source of serious harm. Ms. Vida stated her view that that $500 is a significant amount of money for regulatory purposes. Mr. Marsteller said that in the present election cycle, one candidate had considered the amount significant enough to return a contribution.

Commission Chair Grant stated her preference for requiring disclosure of the contribution rather than banning it outright, a position with which Mr. Crosby agreed.

**Motion 98-10-13-45 (Norris/Kingsley) Moved, seconded and passed: That the Proposal concerning a ban on contributions by lobbyists to political campaigns of City officers be withdrawn.**

**3. Proposed ban on lobbying on a contingency fee basis.**

Ms. Vida said the proposal would discourage possible unethical conduct by overzealous lobbyists motivated to succeed because of a contingency fee arrangement. She said there is a similar ban on contingency fee-based lobbying on the state level.

Commissioner Norris said she could empathize with a person who wants to be paid only when some concrete results have been achieved for the client. She suggested that other ways of controlling unethical behavior be sought.

Commission Chair Grant said that no problem of unethical behavior had been brought to the Commission's attention.

Mr. Pilpel suggested that requiring the reporting of contingency fee arrangements could be helpful.

Mr. Johnson stated that regulation should be put off until the problem is better defined.

Commissioner Norris said an attorney would not object to disclosing the contingency fee.

**Motion 98-10-13-46 (Norris/Kingsley) Moved, seconded and passed: That the Proposal concerning a ban on contributions by lobbyists to political campaigns of City officers be withdrawn.**

**Motion 98-10-13-47 (Norris/Kingsley) Moved, seconded and passed: That lobbyists be required to report contingency fee contracts.**

**4. Proposed clarification that unions are subject to provisions of the Lobbyist Ordinance if they meet the qualification threshold, exclusive of collective bargaining**

Ms. Vida said that unions are subject to compliance with the Lobbyist Ordinance. She referred to a proposal prepared by staff and distributed at today's meeting. The proposal provides an explicit exception for contacts made by unions in connection with collective bargaining and resolution of employee grievance procedures.

Ms. Moll, in response to an inquiry by Mr. Pilpel, said that the proposal had been drafted in response to union concerns.

Mr. Johnson requested time to review the new proposal, given its potential effects on many thousands of employees. Mr. Boileau supported this request.

Commissioner Dockendorff stated that the issue of whether unions are subject to the Ordinance had not been considered by the Commission and that the Commission had not been provided with the City Attorney's advice letter on this matter.

Ms. Moll clarified that the Commission discussed the union issue prior to revising the lobbyist manual and during several meetings before it recommended the amendments to the Board of Supervisor.

Mr. Pilpel said that the Commission had discussed this issue prior to the City Attorney's opinion.

Ms. Mayo also disagreed with Commissioner Dockendorff's statement that the Commission had never reviewed the issues raised in the City Attorney's advice letter. She also noted that the ordinance itself provides no exemptions for unions.

Commission Chair Grant noted her agreement with Ms. Mayo and also expressed her support for the new proposal.

Mr. Boileau said he had found a letter addressed to then Supervisor Nancy Walker which indicated to him that a prerequisite to being considered a lobbying organization would be the existence of staff paid by the organization to lobby. He did not see how unions could be covered by the Ordinance, considering that in his opinion the unions make no money by lobbying. He said his lawyer had told him the Meyers-Milias-Brown Act would preclude this regulation of unions. He further said that it is unreasonable to expect union members to make as fine a distinction as they would be required to do under the proposed definition of lobbying contacts.

Ms. Mayo disagreed with Mr. Boileau's understanding of the Meyers-Milias-Brown Act. She said everyone had the same struggle in terms of understanding what a contact was.

Ms. Ahn agreed with Ms. Mayo's point that business and organization lobbyists do not necessarily make money from lobbying.

Mr. Boileau said that other business organizations hire people specifically to lobby.

Commission Chair Grant disagreed with Mr. Boileau's suggestion that only professional lobbyists are covered by the ordinance.

Ms. Vida asked for written submissions on the issue. She said the staff had been consistent in its treatment of the issue.

Mr. Marsteller said he thought it would be useful to consult state law concerning union regulations.

Mr. Pilpel said he thought that the new proposal recognized the unique role of labor in City government. Ms. Moll and Ms. Starkman then answered questions from Mr. Pilpel regarding the use of the term "contact:"

1. A meeting with the head of the Department of Human Resources regarding a Memorandum of Understanding would not be deemed a contact;
2. A call to a Supervisor concerning a vote on the Memorandum of Understanding would be deemed a contact; and
3. A call to a Supervisor concerning a vote on a living wage ordinance would be deemed a contact.

Commissioner Dockendorff stated that the Commission should similarly study the role of homeowners' associations and similar entities.

Commission Chair Grant concluded that the consensus of the Commission was to defer action on the matter.

**5. Proposed amendment requiring a disclaimer notice on written information provided by a lobbyist to a City officer at the officer's request**

*Ms. Mayo submitted for the record her October 13 letter in response to Commissioner Melbostad's request.*

The Commission declined to approve a staff proposal to require a disclaimer notice on written information provided by a lobbyist to a City officer.

**2. Discussion and Possible Action re: Forwarding revised proposed Amendments to the Board of Supervisors**

Commission Chair Grant stated that the Commission should defer sending to the Rules Committee the proposals adopted on the Lobbying Ordinance until the draft language is available for review.

Mr. Pilpel agreed, saying that it would be better to wait to see the draft language that would reflect the actions taken today.

Ms. Starkman noted that the only language which would be affected by the meeting today would be the removal of the proposals.

**Motion 98-10-13-48 (Dockendorff/Norris) Moved, seconded and passed: That the adopted Amendments to the Lobbyist Ordinance be referred to the Board of Supervisors for appropriate action.**

**9. Discussion and Possible Action re: Approval of FY 1997-98 draft Annual Report**

Ms. Vida said that she had delivered a draft of the Annual Report to Commission Chair Grant for her review. She said a revised draft will be delivered to the Commission in advance of the November meeting.

Commission Chair Grant said that approval of the Report will be deferred to the next regularly scheduled meeting, at which time the Commission will also determine ways to publicize the Report.

**10. General Discussion re: Whether current laws are inadequate to address the types of conduct the Commission has seen in complaints, consideration of proposals for amendments to the City Charter and ethics-related ordinances to address conduct not currently covered by those laws, and how the complaint process can be made more effective.**

The Commission deferred action on this item until a future meeting.

**11. Discussion and Possible Action re: Items for Future Agendas**

Mr. Marsteller requested the Commission to begin consideration of the budget issues it will face.

**12. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

Mr. Pilpel suggested that the Commission establish budgetary priorities. He also said he wanted to alert the Commission to the new Form 700 proposed by the Fair Political Practices Commission. Mr. Lynn said that it has been reviewed by the staff.

**13. Adjournment**

The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

_____

Joe Lynn
Campaign Finance Officer

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION
# NOTICE OF SPECIAL MEETING AND AGENDA
## FOR
## MONDAY, November 2, 1998, 5:00 P.M.
## 1390 MARKET STREET, ROOM 227

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I. **Call To Order and Roll Call**

II. **Public Comments Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Campaign Consultant Registration and Client Fees proposed for implementation in January 1999.**

On September 14, the Ethics Commission proposed Campaign Consultant registration and client fees. On October 7, the Finance Committee of the Board of Supervisors considered the proposal but deferred action.

At this special meeting, the Ethics Commission will reconsider the proposed fees. The Commission will review revised projections regarding the cost of administration and anticipated revenue associated with the Campaign Consultant Program. The revised projections are based on the campaign consultant reports filed on June 15, 1998 and September 15, 1998.

V. **Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

VI. **Adjournment**

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Ethics Commission

1390 Market Street, Suite 801
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V. **Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

VI. **Adjournment**

(Please turn over for page 2)

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**Minutes of the Ethics Commission**
**Special Meeting**
**November 2, 1998**
**5:00 p.m.**
**1390 Market Street, Room 227**

**I. Call to Order and Roll Call:**

Commission Vice Chair Henri E. Norris called the meeting to order at 5:00 p.m. The following were present:

COMMISSIONERS PRESENT: Henri E. Norris, Vice Chair; Robert D. Dockendorff, Commissioner; Carol Kingsley, Commissioner; Paul H. Melbostad, Commissioner. Commissioner Norris noted the excused absence of Isabella Grant, Commission Chair.

STAFF PRESENT: Ginny Vida, Executive Director; Naomi Starkman, Deputy Executive Director; Peggy Ahn, Whistleblower/Educator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney

OTHERS PRESENT: Fred Ridel; Charlie Marsteller, Common Cause

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

There was no public comment.

**III. Discussion and Possible Action Re: Campaign Consultant Registration and Client Fees for Implementation in 1999.**

Ms. Vida explained that at its September meeting, the Commission voted to forward proposed campaign consultant registration and client fees to the Board of Supervisors. The proposal was calendared for the October 7 meeting of the Finance Committee, whose members include Committee Chair Mabel Teng, Supervisor Barbara Kaufman and Supervisor Gavin Newsom.

Ms. Vida reported that at the meeting, Supervisors Teng and Kaufman expressed concern that the proposed fees impose too great a burden on the filers and that they do not take into account certain large-scale expenses incurred by campaign consultants. She conveyed Supervisor Kaufman's view that it would be reasonable for the fees to cover 40 percent of the cost of the program and the General Fund could absorb the rest, since the cost to the City would not be significant. Ms. Vida also conveyed Supervisor Newsom's view that the Commission should cover 100 percent of the costs and that every filer should be responsible for paying at least some level of registration fees. Ms. Vida conveyed Supervisor Teng's view that a reduced set of fees would be appropriate, since the fees will be imposed on a trial basis for the first year and will be re-evaluated when there is more information available about actual costs and revenues.

Ms. Vida reported that at the Finance Committee meeting, Supervisor Kaufman requested a meeting with the Commission staff. Ms. Vida reported that she, Deputy Executive Director Naomi Starkman, and Deputy City Attorney Kiko Korn met with Supervisor Kaufman and her staff on October 30. At this meeting, two alternative fee options were discussed, one covering 43 percent of the costs, and a second covering 74 percent of the costs. These options incorporated staff's revised projections regarding the cost of administration and anticipated revenues based on a reduction of estimated filers from 50 to 35 and based on the campaign consultant reports filed on June 15, 1998 and September 15, 1998. Ms. Vida explained that staff had prepared an additional fee option for the Commission to discuss.

Ms. Vida reported that Supervisor Kaufman supported **Option 1**, providing for 43 percent coverage of the program's administrative costs. At this level, filers with income between $1,000 - $5,000 per quarter would pay no registration fee and $50 per client; those earning between $5,000 - $20,000 would pay a $100 registration fee and $50 per client; and those earning $20,000 and above would pay a $300 registration fee and $50 per client.

Ms. Vida advised that for today's Commission meeting, staff had also prepared a middle option, **Option 2**, which would cover 55 percent of the administrative costs. At this level, filers earning between $1,000 - $5,000 would pay a $50 registration fee and $50 per client; those earning between $5,000 and $20,000 would pay a $200 registration fee and $50 per client; and those earning $20,000 and above would pay a $400 registration fee and $50 per client.

Ms. Vida also presented **Option 3**, which would cover 74 percent of the cost of administration. Under this option, filers earning between $1,000 - $5,000 would pay a $50 registration fee and $50 per client; those earning between $5,000 - $20,000 would pay a $300 registration fee and $75 per client; and those earnings $20,000 and above would pay a $500 registration fee and $100 per client.

Ms. Vida recommended that the Commission choose Option 1, based on the merits of the proposal. Ms. Vida said that fees associated with a 43 percent recovery rate would be most consistent with current lobbyist fees, which are $300 for registration and $50 per client. Ms. Vida also explained that staff continues to propose a tiered system for campaign consultants because the qualification threshold for campaign consultants is only $1,000 in a calendar year.

Ms. Vida noted that during public comment at the Commission's past meetings, campaign consultants described the potential effect of a high fee system. One consultant had described how his earnings might reach $20,000, placing him in the highest fee bracket, but that $18,000 of the $20,000 might constitute expenses, leaving him a profit of only $2,000. Ms. Vida noted that at this time the Commission does not have enough information about such expenses to know what the exact profit margins or expenses would be. She recommended Option 1, the lowest fee schedule, as the safest course to avoid burdening filers with unreasonable fees.

Commissioner Melbostad stated that the voters had been advised that the Campaign Consultant program would fund itself at no additional cost to the City. He said the Commission had a duty to propose fees that would more closely approach that goal. Commissioner Kingsley supported Commissioner Melbostad's position, noting that the Controller's statement regarding the Proposition G/Campaign Consultant Ordinance was that its implementation should not significantly affect the cost of government. Commissioner Kingsley noted that the Lobbyist Ordinance revenues are only covering two-thirds of the cost of administration of that program. She said that the Commission is already running a deficit in that program, and that allowing an even greater shortfall in the campaign consultant program might prevent the Commission from

obtaining enough resources to adequately administer both programs.

Commissioner Kingsley stated that the program should pay for itself. She added that she would vote for Option 3, covering 74 percent of the costs, but that since it was unlikely that the Board would favor this proposal, she would support Option 2, for 55 percent coverage.

Commissioner Norris expressed her concern that based on comments from the campaign consultants, Option 2 would create an undue burden on lower earning campaign consultants. Commissioner Norris expressed her preference for allowing the General Fund to absorb the balance of the administrative costs at the present time, and then revisiting the issue next year when the Commission has obtained more information regarding the actual earnings and expenses incurred by campaign consultants.

Commissioner Dockendorff stated that the earnings tiers need to be broadened to better reflect the actual earnings of consultants. He also stated that it is important to keep the administrative costs of both the Lobbyist Ordinance and the Campaign Consultant Ordinance on the same level, even though this would not be in accordance with the Campaign Consultant Ordinance, which called for 100% coverage. Commissioner Dockendorff expressed his support for Option 1, recommended by staff, stating that it was the most practical option at this time.

Ms. Vida stated that under Option 1, the Commission would produce revenues of 43 percent, and the City's contribution would be 57 percent, or only $16,530 per year. Ms. Vida stated that this would not significantly affect the cost of government. She stated that she would prefer to have the lower fees implemented this year and reevaluate the fees next year when more information is available.

Commissioner Melbostad stated that at a minimum, the Commission should propose Option 2. He noted that the Commission's duty is to propose good public policy and that the Board should take responsibility for any legislative decisions not favored by the voters. He added the importance of Supervisor Newsom's recommendation that the program fund itself, and that as one of the Supervisors who placed the Proposition on the ballot, he would best know the legislative intent behind the Ordinance. Commissioner Melbostad added that Option 2 respected the views of all the members of the Finance Committee.

Fred Ridel stated that the $20,000 threshold seemed very low for high level earners. He felt that filers in this range would be "getting a free ride" from the City.

Commissioner Kingsley said that it was important to resolve the fee issue at this meeting. She said that although she wanted to vote for Option 3 because it was closest to the best interests of the public, the Commission should propose Option 2 and make a good faith effort to cover at least half the administrative costs of the program.

Commissioner Norris again stated that the Option 2 fee schedule would place a heavy burden on those least able to afford the fees. She proposed reducing that burden until more information was available. Commissioner Melbostad expressed his concern that by proposing a reduced schedule such as the one described in Option 1, the Finance Committee may decide to reduce the fees even further. Ms. Vida said that she supported Option 1 out of fairness to lower earning consultants. She noted that Supervisor Kaufman also favors this schedule.

Fred Ridel stated that in his experience as a consultant, although not as a campaign consultant, it

is standard practice for consultants to pass the costs of registration and client fees directly onto their clients.

There was some discussion about what would occur in the event of a split vote by the Commissioners. Deputy City Attorney Claire Sylvia stated that a split vote would result in a no new recommendation.

Commissioner Melbostad asked staff to convey to the Board that the Commission struggled greatly to be fair to the voters and yet show its respect to the Board. He said, however, that he would change his vote to Option 1 in order to reach a consensus.

Commissioner Dockendorff stated that the Commission could inform campaign consultants and the Board next year that the Commission's objective is to have the program fully self-funded. Commissioner Kingsley replied that it would be harder to justify raising the fee schedule from covering 43 percent in one year to 100 percent the next year.

Commissioner Dockendorff expressed his willingness to reach a consensus with the rest of the Commission, whether it meant proposing either Option 1 or Option 2. After some discussion, the Commission reached a consensus favoring Option 2.

**Motion 98-11-5-49 (Melbostad/Kingsley) Moved, seconded and passed: That the Commission adopt Option 2's proposed fee schedule covering 55 percent of the Campaign Consultant Program's administrative costs and recommend Option 2 to the Board of Supervisors for appropriate action.**

**IV. Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

There was no public comment.

**V. Adjournment**

The meeting was adjourned at 6:20 p.m.

Respectfully submitted,

Peggy Ahn, Whistleblower/Educator

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Ethics Commission

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA

**for**

**Monday, November 9, 1998, 5:00 p.m.**
**1390 Market St., Room 227 (Mezzanine level)**

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I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meeting of October 13, 1998 and November 2, 1998**

IV. **Commissioners' Reports**

V. **Executive Director's Report**
- **A. Advice and Opinions issued**
- **B. Updates**
- **C. Projects and Activities**

VI. **Discussion and Possible Action Re: Approval of FY 1997-98 draft Annual Report**

VII. **Discussion and Possible Action Re: Proposed amendments to the Lobbyist Ordinance (See enclosed legislative summary.) A copy of the proposed amendments with the revisions previously approved by the Ethics Commission is included in the public agenda packet. This document is available from the Commission Office and is available on the Commission's Internet web site at http://www.ci.sf.ca.us/ethics/.**

**A) Discussion and Possible Action Re: Unresolved Issues:**

1. **proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure;**

2. **proposed clarification that unions are subject to provisions of the Lobbyist Ordinance if they meet the qualification threshold, exclusive of collective bargaining and grievance procedures.**

**B) Discussion and Possible Action Re: Forwarding revised proposed Amendments to the Board of Supervisors**

VIII. **General Discussion Re: Whether existing laws are adequate to address the types of conduct at issue in complaints; whether local laws should be amended to address conduct not currently covered by those laws; and how the complaint process can be made more effective.**

**(Please turn over for page 2)**

IX. Discussion and Possible Action Re: Items for Future Agendas

X. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission

XI. Adjournment

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# San Francisco Ethics Commission

Minutes

San Francisco Ethics Commission Meeting
1390 Market St., Room 227
November 9, 1998, 5:00 p.m.

Approved 12/14/98

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**I. Call To Order and Roll Call.**

Commission Chair Isabella H. Grant called the meeting to order at 5:10 p.m. The following were present:

**COMMISSIONERS PRESENT:** Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Paul H. Melbostad, Commissioner; Robert D. Dockendorff, Commissioner. Commissioner Carol M. Kingsley was excused.

**STAFF PRESENT:** Ginny Vida, Executive Director; Naomi Starkman, Deputy Executive Director; Shaista Shaikh, Campaign Finance Auditor; Joe Lynn, Campaign Finance Officer.

**OFFICE OF THE CITY ATTORNEY:** Kiko Korn, Deputy City Attorney.

**OTHERS PRESENT**: Leirion Gaylor, Mayor's Office of Finance and Legislative Affairs; Walter Johnson, San Francisco Labor Council; Bob Boileau, S.F. Labor Council; Jim Sutton, Nielsen, Merksamer; Anita Mayo, Pillsbury, Madison and Sutro; David Pilpel, Sunshine Ordinance Task Force; Charles Marsteller, California Common Cause; Phillip Crosby, Reuben & Alter; Ed Rosario, San Francisco Labor Council; David Novogrodsky, San Francisco Labor Council; Stephanie Sellai, GCA Strategies.

**MATERIALS DISTRIBUTED:**

SF Ethics Commission Agenda, November 9, 1998
Draft Minutes of the SF Ethics Commission Meeting, November 2, 1998
Draft Minutes of the SF Ethics Commission Meeting, October 13, 1998
Approved as Amended Minutes of the SF Ethics Commission Meeting, September 14, 1998
Executive Director's Report, November 9, 1998
Memorandum to Ginny Vida, Executive Director, from Julie Moll, Deputy City Attorney, re: Proposed Amendments to the Lobbyist Ordinance dated October 17, 1998
Draft of San Francisco Ethics Commission Annual Report, July 1997-June 1998
Article from SF Weekly, "Ethics, Anyone?" dated October 28-November 3, 1998
Article from the SF Chronicle, "Teng, Ammiano Come at Voters From Opposite Sides of Spectrum," dated October 22, 1998
Article from SF Examiner, "S.F. Supervisors," dated November 3, 1998

**II. Public Comment Re: Matters appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission.**

David Pilpel, representing the Sunshine Ordinance Task Force, requested that the Commission's quarterly lobbyist reports include the full name and title of all persons lobbied and ID numbers for campaign committees mentioned.

Charlie Marstellar of Common Cause stated that Supervisor Ammiano has introduced a new Board resolution directing the Commission to work with the City Attorney's office to draft a Charter amendment to provide for a review process for complaints relating to elections. Mr. Marstellar provided copies of the resolution for the Commission's review. Commission Chair Grant stated that the Commission will discuss this matter further under agenda item VIII. She asked staff to inquire as to whether the January 4, 1999 deadline can be extended for the Commission to report its findings and recommendations to the Board of Supervisors.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of October 13, 1998 and November 2, 1998.**

Commissioner Robert D. Dockendorff requested that the fourth paragraph of agenda item VII (A) (2) on page 6 of the October 13 minutes be amended to reflect the following change: "Commissioner Dockendorff questioned whether a $500 contribution could be a source of serious ~~harm~~ *influence*." He further requested that the fourth paragraph of agenda item VII (A) (4) on page 7 in the revised draft be replaced by the corresponding paragraph in the original draft.

Anita Mayo of Pillsbury, Madison & Sutro requested that the following language be added to the first paragraph on page 5: "The letter recommended deletion of the disclaimer notice." Ms. Mayo then asked that the first paragraph be moved to pages 8 and 9 where the disclaimer notice is discussed. Ms. Mayo also requested that the following change in the first paragraph on page 6 be incorporated: "Ms. Mayo told Commissioner Norris that such a range would be ~~helpful~~ *preferable to listing the names of designated employees*." Ms. Mayo then indicated that Motion 98-10-13-46 was incorrect. Commission Chair Grant stated that the motion should read: "That the proposal concerning a ban on contingency fees be withdrawn."

Mr. Marstellar noted that the motion on page 9 should be numbered as Motion 98-10-13-48 instead of Motion 98-10-13-46.

Mr. Pilpel requested and Commission Chair Grant determined that the following language should be added to the top of page 9: "Ms. Mayo had proposed deletion in a letter to the Commission dated October 13, 1998, and Mr. Pilpel and Mr. Marstellar indicated their agreement to delete the disclaimer."

After discussion it was agreed that the date of the City Attorney's advice letter concerning application of the Lobbyist Ordinance to the unions would be confirmed and included in the minutes.

**Motion 98-11-09-49 (Norris/Dockendorff) Moved, seconded and passed: That the minutes of the October 13, 1998 meeting be approved as amended.**

**Motion 98-11-09-50 (Melbostad/Norris) Moved, seconded and passed: That the minutes of the November 2, 1998 meeting be approved as submitted.**

**IV. Commissioners' Reports.**

Commission Chair Grant announced the settlement of complaint number 26-980529 filed against Alfredo C. Perez for alleged violations of the Political Reform Act during the June 2, 1998 election. Chairperson Grant stated that Mr. Perez has agreed to pay a fine of $150 for filing late pre-election campaign statements.

**V. Executive Director's Report.**

Executive Director Ginny Vida reported that the Board of Supervisors and the Finance Committee of the Board of Supervisors had approved the Commission's proposal for campaign consultant fees. The proposal provides for a three-tiered fee schedule and covers 55 percent of the costs of administering the campaign consultant program.

Ms. Vida noted that the Commission had collected $825 in late campaign committee filing fees, $4,550 in lobbyist registration fees and $3,700 in lobbyist client fees for the period July 1- November 6, 1998. Ms. Vida stated that Mr. Lynn has been pursuing late filers aggressively.

In response to Commissioner Dockendorff's question concerning late posting of campaign finance information on the web site, Mr. Lynn explained that the staff is planning a budget with DTIS relating to an online filing system that would eliminate the need for posting information to the web. If the Commission implements an online filing system, the problem will resolve itself.

Mr. Lynn brought to the Commission's attention a newspaper article in which Supervisor Ammiano expresses his concerns about push polling. Mr. Lynn explained that push polling adversely affects public opinion by defaming a particular candidate. The article reports that Supervisor Ammiano has asked the Commission to look into the practice of push polling. The Commission agreed that the issue would be discussed as a future agenda item.

After some discussion, it was agreed that Ms. Vida would call the Rules Committee to inquire about the status of the Commission's proposed amendments to the Lobbyist Ordinance that were recently forwarded to the Board of Supervisors.

Mr. Pilpel requested that a list of the committees randomly selected for audit be included in the Executive Director's Report. He also asked that the timing of when the committees are selected be publicly reported. Mr. Pilpel asked whether all the 1998 SEI filings have been submitted. Mr. Lynn responded that one commissioner has not complied with the filing requirements. Mr. Pilpel urged further action by the Commission to enforce compliance. Mr. Lynn and Ms. Vida noted that the commissioner has been contacted several times and has been asked to comply. Ms. Vida stated that she would pursue the matter further through the commissioner's appointing authority.

Ms. Vida added that four members of the Ethics Commission staff served as poll workers on Election Day.

**VI. Discussion and Possible Action Re: Approval of FY 1997-98 Draft Annual Report**

Commissioner Melbostad commended Ms. Vida for the draft Annual Report and noted that it reflects that the Commission has made significant progress.

**Motion 98-11-09-51 (Melbostad/Norris) Moved, seconded and passed: That the FY 1997-98**

**Annual Report be approved.**

**VII. Discussion and Possible Action Re: Proposed Amendments to the Lobbyist Ordinance**

**A) Discussion and Possible Action on Unresolved Issues:**

**1. Proposed requirement to consider lobbying contact with City employees designated in S.F. Admin. Code Ch. 58. to be a "contact" for purposes of lobbyist qualification and disclosure.**

Commissioner Melbostad stated that after reviewing the minutes of the previous meeting and speaking with the Deputy City Attorneys, he feels that contacts with the employees designated by Chapter 58 should be reported. He questioned why this proposal was not approved. Commission Chair Grant explained that it was deferred so that more information could be obtained.

Commissioner Melbostad stated that Ms. Mayo had expressed that reporting the identity of the contacts would be difficult. Ms. Mayo confirmed that having to report the name and title of the designated employees would pose an additional burden. Commissioner Melbostad noted that if the names of the contacts were not disclosed, the public would be unable to discern whether the contacts had any influence over the decisions made.

After some discussion on the difficulty/ease of obtaining names of contacts that need to be reported, Stephanie Sellai of GCA Strategies read a letter addressed to Ms. Debra Stein from Dorothy Yee of the Department of Human Resources. In the letter, Ms. Yee states that the Department of Human Resources does not have the resources to provide instantaneous information to lobbyists regarding the identity of designated employees. Commissioner Dockendorff agreed with Ms. Mayo's point and stated that the Commission and Mr. Pilpel were asking for a level of detail that is not of interest to the public. Commissioner Melbostad offered to work with Commissioner Dockendorff and the City Attorney's Office on this issue. Commission Chair Grant said that the Commission should work out an approach that addresses the concerns that have been raised.

**2. Proposed clarification that unions are subject to provisions of the Lobbyist Ordinance if they meet the qualification threshold, exclusive of collective bargaining and grievance procedures.**

Bob Boileau of the San Francisco Labor Council began by presenting the Commission with the following:

1. A letter from Stewart Weinberg, attorney with Van Bourg, Weinberg, Roger & Rosenfeld. Mr. Boileau stated that this letter provides the basis for his organization's claim to exemption under the Meyers-Milias-Brown Act.

2. A letter to Nancy Walker, former President of the San Francisco Board of Supervisors, from Marcia Rosen. Mr. Boileau noted that the letter demonstrates that it was not the initial intent of those who drafted the Lobbyist Ordinance to require anyone who makes any contacts to qualify as a lobbyist. Mr. Boileau stated that if business agents are primarily employed as business agents, then their incidental contacts should not be considered contacts for lobbyist purposes. Mr. Boileau further stated that two other letters supporting his claim of the initial intent of the Lobbyist Ordinance are not in the Board of Supervisors' file.

3. A letter from the San Francisco Bar Association addressed to the legislators who drafted the Lobbyist Ordinance. Mr. Boileau stated that those involved in drafting the lobbyist legislation were also concerned with the thresholds that were being set up, but finally agreed to them. Mr. Boileau further stated that the board of the San Francisco Bar Association went on record in support of the legislation establishing certain thresholds and exempting from the thresholds full-time employees employed primarily to perform services other than influencing legislation.

4. A three page document prepared by Mr. Boileau proposing changes to the Ordinance. Mr. Boileau proposed two fundamental changes to §16.521(j). First, he suggested that the individual employee--and not the organization--should be considered the lobbyist. Second, the threshold should be $3200 over a two-month period, as well as 25 contacts, for the purpose of lobbying. Last, regarding the Commission's proposed exemption for contacts made by unions in connection with collective bargaining, Mr. Boileau described certain union duties that he said the Commission may not be aware of. He said that unions adjudicate complaints and grievances and negotiate memoranda of understanding. Mr. Boileau stressed that the original intent of the Ordinance was to exclude collective bargaining activity.

Commissioner Melbostad stated that it is good public policy to take into consideration the original intent of the Ordinance. Commissioner Melbostad questioned Mr. Boileau as to whether employees of his organization would typically reach the qualification threshold by making 25 contacts. Mr. Boileau stressed that the content of the contact is important. Mr. Boileau agreed that if he made 25 contacts attempting to influence policy matters, he would qualify as a lobbyist. However, Mr. Boileau explained that his organization regularly deals with employees, designated by Chapter 58, concerning routine activities related to moving projects forward.

Commissioner Melbostad asked Mr. Boileau to provide an example of activity that would fall outside of the exemption proposed by Mr. Boileau. Mr. Boileau stated that his organization regularly appears before departments such as the Health Department and the Human Rights Commission relating to the day-to-day business of those departments. He noted that his organization employs a lobbyist in Sacramento who is registered as a lobbyist and who complies with all the requirements. In response to Commissioner Melbostad's inquiry, Mr. Boileau said that he does not know of any person who is employed to be a lobbyist in San Francisco. Mr. Boileau reiterated that the threshold of $3200 and 25 contacts would provide clear guidelines as to who qualifies as a lobbyist.

Mr. Pilpel suggested that the Commission should review the Board of Supervisors' files and legislative history.

A question was raised as to whether someone who is not being paid for lobbying would still qualify as a lobbyist, since this person would not reach the $3200 threshold. There was also some discussion on whether activity for the purpose of influencing policy matters would be reported as lobbying if an employee is not paid specifically for the lobbying activity. Commissioner Dockendorff concluded that there is a problem with the original language of the Ordinance.

Commissioner Norris recommended that the Commission table the matter until the Board of Supervisors decides on the amendments already presented by the Commission. Ms. Vida agreed that the two matters (agenda items VII (A)(1) and VII (A)(2)) should be tabled. She stated that it is important for the Board to consider the large proposal that the Commission has already forwarded.

Commissioner Melbostad noted that Ms. Vida recently sent a memo to unions informing them of their obligation to comply, under the existing Ordinance, if they meet the threshold. Commissioner Melbostad also noted that the Commission had previously been advised by the City Attorney's Office that unions are covered under the Ordinance. Ms. Vida said the Commission's acceptance of this advice was reflected in the Commission's decision to include specific reference to unions in the Lobbyist Manual.

It was agreed that the Board should be allowed to review the proposals already forwarded without further amendments. It was also agreed that Ms. Vida would send a notice to City officers, with a list of currently registered lobbyists, asking the officers to notify the Commission of persons lobbying who are not on the list. Mr. Boileau requested that the Commission adopt a sense of its intentions.

**Motion 98-11-09-52 (Dockendorff/Norris) Moved, seconded and passed: It is the sense of the Commission that contacts within the scope of collective bargaining activities are not subject to the Lobbyist Ordinance and that the Commission will work with unions to develop language pertaining to the exclusion of such activities. The Commission further agrees, with regard to its proposed amendments to the Lobbyist Ordinance, to table the provision clarifying that unions are covered. The Commission further agrees that it was not its intention, in approving the Lobbyist Manual, to designate as lobbyist contacts activities within the scope of collective bargaining.**

**Motion 98-11-09-53 (Norris/Dockendorff) Moved, seconded and passed: That the Commission tables agenda items VII (A) (1) and VII (B) (2) until the Commission learns what the Board of Supervisors decides to do with the amendments that the Commission has already forwarded.**

**B. Discussion and Possible Action re: Forwarding revised proposed Amendments to the Board of Supervisors**

The Commission agreed not to add further provisions to the proposed amendments that were previously forwarded to the Board.

**VIII. General Discussion Re: Whether existing laws are adequate to address the types of conduct at issue in complaints; whether local laws should be amended to address conduct not currently covered by those laws; and how the complaint process can be made more effective.**

Ms. Vida discussed several staff proposals aimed at strengthening the City's ethics-related laws and making the complaint process more effective. She reported that the Ethics Commission staff and the City Attorney's Office are currently working together to draft a readable manual summarizing ordinances within the Commission's jurisdiction. Ms. Vida stressed that a plain-English manual would encourage better quality complaints and would discourage submission of complaints outside its jurisdiction.

Commissioner Norris asked whether there are some areas over which neither the Commission nor any other agency has authority, and whether the Commission may want to consider expanding its authority to such areas. Ms. Vida responded that certain conflicts of interest provisions could be added to current laws to address conduct currently not covered. She also said that with respect to the Whistleblower Ordinance, the Commission's enforcement authority is limited to allegations of

retaliation. She suggested that the Commission could propose an ordinance pertaining to civil violations relating to the misuse of city resources. Ms. Vida also suggested revision of the complaint form. Deputy Executive Director Naomi Starkman stated that if the staff amended the complaint form, it would assist complainants and improve the quality of complaints.

Ms. Vida stated that the City's Electronic Filing Ordinance currently requires campaign filers who reach a $5,000 annual threshold of activity to file electronically. However, there is no comparable legislation in place for lobbyists and campaign consultants. Ms. Vida suggested that the Commission consider proposing legislation requiring lobbyists and campaign consultants to file electronically. Mr. Pilpel suggested that the same requirement be considered for SEI filers. Mr. Lynn explained that such a requirement would be difficult to implement currently but that in the future this may be an option.

Ms. Mayo suggested that the Commission establish a firm filing format before imposing electronic filing requirements. Ms. Vida responded that the Commission could be given the authority to require electronic filing by lobbyists and campaign consultants, and after a filing format and mechanism are in place, a motion to implement the requirement can be approved. Deputy Executive Director Naomi Starkman noted that the way lobbyists and campaign consultants file information differs radically from the way the campaigns file, in that the lobbyists and consultants use much simpler forms. She stated that it would be easier to design an electronic filing program for lobbyists and campaign consultants.

Ms. Vida also proposed that the Commission's investigators be authorized to conduct intake interviews of complainants and assist them in filling out the complaint form. The intake procedure would enable staff to solicit as much relevant information as possible, thereby encouraging more substantive complaints. Staff would also be able to refer complainants to other departments if the complaint is not under the Commission's jurisdiction, thus saving time for both complainants and staff. Ms. Vida also said that the net effect of this procedure would likely be less time spent by staff in processing complaints. Ms. Starkman added that by assisting complainants, staff would be able to increase the quality of complaints over which the Commission has jurisdiction.

Ms. Vida reported that DTIS is preparing a comprehensive, long-term electronic filing proposal for the Commission. The Mayor's Budget Office has also asked the Commission to determine what assistance, if any, might be obtained from the Secretary of State's Office and the Los Angeles Ethics Commission in developing our local program. The Secretary of State's Office has agreed to meet with staff later this month. Ms. Vida noted that the Commission needs more information on the electronic filing proposal before it can prepare a supplemental budget proposal. Ms. Vida added that the program distributed at the Mayor's State of the City Address listed full funding of the Ethics Commission as one of the Mayor's goals.

Commissioner Melbostad asked the staff to consider and report on the following three issues: 1) whether the Charter should be amended to remove the requirement that the Commission refer complaints to the City Attorney or the District Attorney; 2) whether the Commission should have jurisdiction over violations of the Elections Code; and 3) whether the Commission should define the term "gross misconduct" in the Whistleblower Ordinance and be given enforcement authority over that provision. Ms. Vida clarified that the Commission currently has authority to investigate but not to enforce that provision. Commissioner Melbostad suggested expanding the Commission's authority in that area. Mr. Pilpel suggested that the Commission report on the resolution of complaints that are referred to the City Attorney and District Attorney. He also suggested that the Commission should be funded to retain a full time MIS staff member to assist the Commission with its electronic filing project.

It was decided that this item be continued for discussion at the next meeting.

**IX. Discussion and Possible Action re: Items for Future Agendas**

The Commission determined that the following items should be calendared for future agendas: revised complaint form; continuation of agenda item VII; how the Commission selects for audit; push polling; the review process for election complaints per Supervisor Ammiano's proposed Board resolution; and agenda item VIII. Commission Chair Grant stated that future agendas will list specific items, if any, to be discussed under Commissioners Reports and the Executive Director's Report.

**X. Public Comment Re: Matters Appearing or Not Appearing on the Agenda which are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XI. Adjournment**

The meeting was adjourned at 8:00 P.M.

Respectfully submitted,

Shaista Shaikh
Campaign Finance Auditor

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**Ethics Commission**

1390 Market Street, Suite 801
San Francisco CA 94102
Phone 554-9510 Fax 703-0121

# SAN FRANCISCO ETHICS COMMISSION AGENDA

**for**

**Monday, December 14, 1998, 5:00 p.m.**
**1390 Market St., Room 227 (Mezzanine level)**

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I. **Call To Order and Roll Call**

II. **Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

III. **Discussion and Possible Action Re: Approval of minutes of the meeting of November 9, 1998**

IV. **Chairperson's Report**

A. **Discussion and Possible Action: Appointment of a Personnel and Budget Committee**

V. **Executive Director's Report**

A. **Updates**

1. **Pending Approval by Mayor: Campaign Consultant Fees**
2. **Pending Legislation: False Endorsements in Campaign Literature**
3. **Pending Legislation: Amendments to the Lobbyist Ordinance**
4. **Current Staffing**
5. **Report on Volume of Calls Received via the Whistleblower Hotline**

B. **Projects and Activities**

1. **Report on Meeting with Secretary of State's Office re: Electronic Filing**
2. **Campaign Finance Audit Program**
3. **Campaign Consultant Program**
4. **Lobbyist Program**
5. **Distribution of the FY 1997-98 Annual Report**

VI. **Discussion and Possible Action: Supplemental Budget**

A. **Approval of proposed Supplemental Budget for FY 1998-99 re: Comprehensive Electronic Filing Program**

B. **Referral to Personnel and Budget Committee of Review of Staff Salaries**

VII. **Discussion and Possible Action: Possible Reconsideration of proposed Ordinance prohibiting false endorsements in campaign literature, based on recommendations made by Supervisor Ammiano.**

**(Please turn over for page 2)**

VIII. General Discussion Re: Whether existing laws are adequate to address the types of conduct at issue in complaints; whether local laws should be amended to address conduct not currently covered by those laws; and how the complaint process can be made more effective.

A. How the complaint process can be made more effective

1. Discussion and Possible Action: Approval of proposed revised Complaint Form

B. Discussion of Commission priorities re: Initiatives identified by the Commission and Staff. (A revised Summary and Status of Commission Initiatives will be provided for this discussion.)

IX. Discussion and Possible Action: Review of Process for Selecting Committees for Audit

X. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session

XI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated Litigation as Plaintiff
Number of possible cases: 1

XII. Discussion and vote as to whether to disclose deliberations conducted in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIII. Discussion and Possible Action Re: Items for Future Agendas

XIV. Public Comment on items appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission

XV. Adjournment

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*Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.*

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**Minutes of the**
**San Francisco Ethics Commission**
**1390 Market St., Room 227**
December 14, 1998; 5:00 p.m.

## I. Call To Order and Roll Call

Commission Chair Isabella H. Grant called the meeting to order at 5:10 p.m. The following were present:

**COMMISSIONERS PRESENT:** Isabella H. Grant, Chairperson; Henri E. Norris, Vice-Chairperson; Paul H. Melbostad, Commissioner; Robert D. Dockendorff, Commissioner; and Commissioner Carol M. Kingsley.

**STAFF PRESENT:** Naomi Starkman, Deputy Executive Director; Peggy Ahn, Whistleblower/Educator; Shaista Shaikh, Campaign Finance Auditor; Joe Lynn, Campaign Finance Officer.

**OTHERS PRESENT:** Leirion Gaylor, Mayor's Office of Finance and Legislative Affairs; Rod Loucks, Department of Telecommunications and Information Services ("DTIS"); Nishan Majorian, NetFile; Don Ellison, California Common Cause; David Pilpel, Sunshine Ordinance Task Force

**MATERIALS DISTRIBUTED:**

Ethics Commission Agenda, December 14, 1998
Approved as Amended Minutes of the Ethics Commission Meeting, October 13, 1998
Draft Minutes of the Ethics Commission Meeting, November 9, 1998
Minutes of the Ethics Commission Special Meeting, November 2, 1998
Executive Director's Report, December 14, 1998
Memorandum to Commission Members from Executive Director Ginny Vida, by Joe Lynn, Campaign Finance Manager, re: Options for Comprehensive Electronic Filing Program and attached information from DTIS and NetFile, December 10, 1998

Memorandum to Commission Members from Executive Director Ginny Vida, by Naomi Starkman, Deputy Executive Director, re: Prohibition on False Endorsements on Campaign Literature, December 14, 1998
Draft Ethics Commission Complaint Form and Instructions, December 9, 1998
Memorandum to Commission Members from Executive Director Ginny Vida, by Shaista Shaikh, Campaign Finance Auditor, re: Process of Selecting Committees for Audit, December 10, 1998
List of Ethics Commission Proposed Initiatives, December 14, 1998
Ethics Commission Annual Report, July 1997 - June 1998

## II. Public Comment Re: Matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Pilpel, of the Sunshine Ordinance Task Force, commented on a discussion he previously had with Campaign Finance Auditor Shaista Shaikh regarding the Commission's campaign auditing procedures. Mr. Pilpel expressed concern regarding the Commission's procedure of obtaining third party confirmations from vendors. Mr. Pilpel stated that vendors and/or contributors might object to disclosing information. Commissioner Dockendorff noted that it has been the State's standard procedure to obtain information such as dates and amounts through third party confirmations.

**III. Discussion and Possible Action Re: Approval of minutes of the meeting of November 9, 1998.**

Motion 98-12-14-54 (Norris/Kingsley) Moved, seconded and passed: That the minutes of the November 9, 1998 meeting be approved.

**IV. Chairperson's Report**

**A. Discussion and Possible Action: Appointment of a Personnel and Budget Committee.**

Commission Chair Isabella H. Grant stated that the Commission's bylaws require the Commission's Personnel Committee to meet biannually to review staffing matters. She said that oversight of Commission personnel and budgetary matters would best be handled by a Personnel and Budget Committee made up of two or more Commission members. Commissioner Henri E. Norris and Commissioner Robert D. Dockendorff volunteered to serve as members of the Personnel and Budget Committee. Commissioner Carol M. Kingsley stated that she would consider serving.

**V. Executive Director's Report**

Commission Chair Grant noted that Executive Director Ginny Vida was absent due to illness. Commissioner Grant asked Deputy Executive Director Naomi Starkman to report on the status of the Amendments to the Lobbyist Ordinance, which are pending at the Board of Supervisors' Rules Committee. Ms. Starkman reported that she and Ms. Vida had met with Supervisor Tom Ammiano on November 19 to discuss the Commission's proposal to ban false endorsements in campaign literature. She noted that a second meeting has been scheduled for December 17, 1998 to discuss amendments to the Lobbyist Ordinance. Ms. Starkman noted that staff would report to the Commission about this matter at the Commission's next meeting scheduled for January 11, 1999.

Campaign Finance Officer Joe Lynn reported that the Commission has obtained 100 percent compliance from those required to file their Statements of Economic Interest with the Ethics Commission. He added that the last late filer had been assessed, and had paid, a $100 late fine.

**VI. Discussion and Possible Action: Supplemental Budget**

**A. Approval of proposed Supplemental Budget for FY 1998-99 re: Comprehensive Electronic Filing Program.**

Mr. Lynn reported that the Commission had received a proposal from Rod Loucks of DTIS for software and services to assist the Commission's implementation of an electronic filing program for campaign finance filers, lobbyists and campaign consultants. Mr. Lynn also reported that the Commission had received information from Nishan Majarian of NetFile concerning its electronic

filing services. Mr. Lynn said he would prepare a report by next week discussing his collaboration with Leirion Gaylor of the Mayor's office regarding the Commission's request for funds through a supplemental budget.

Commissioner Melbostad stated that he would favor NetFile's alternative over DTIS' proposal, noting that NetFile's initial costs appear much lower and its on-line filing program could be running within two months. Mr. Lynn explained that although NetFile's cost of $20 per filer per month seemed reasonable, the difference between the monthly cost for large, active filers and for small, occasional filers could be too great. Staff would need to go through each of the files in order to determine the median cost. Mr. Majarian of NetFile replied that NetFile could accommodate the cyclical nature of campaigns to keep costs under control.

Rod Loucks of DTIS stated that its "proposal" was not a bid to the Commission, but rather a report of the costs of developing and implementing an electronic filing program, in response to a request for information from the Commission staff. Mr. Loucks recommended that given the complex nature of contracts and the potential risks involved, the Commission should submit the project to the "RFP" (Request for Proposal) bidding process and ask the City Attorney's Office to negotiate a contract. Mr. Majarian replied that NetFile would be willing to develop the system first before charging the Commission any fees.

Commissioner Norris asked who the political software competitors might be if the Commission decided to "outsource" the project. Mr. Majarian identified four Proof of Concept Partners who have qualified with the Secretary of State to participate in the State's electronic filing program: Statecraft, NetFile, Aristotle, and a private law firm. Mr. Majarian stated his opinion, however, that these other systems were not well suited to provide services for the filing process in a public disclosure system.

Commissioner Dockendorff supported Mr. Loucks' recommendation that the electronic filing project be submitted to the RFP bidding process. He added that NetFile would not be excluded from participating in the RFP process. Mr. Loucks stated that the final review of all bids under the RFP process would take roughly 1 - 2 weeks, after an initial review of 2-3 months.

Mr. Pilpel suggested that the Commission hire a permanent employee to maintain the Commission's information system, due to DTIS' own scheduling constraints and the potential cost of outsourcing projects. Mr. Majarian stated that the Commission would pay only a monthly fee for NetFile to maintain and manage all new and existing data for the electronic filing system, using custom audit tools that would enable the system to internally audit all reports.

Mr. Lynn noted that a committee was necessary to explore these matters more fully. After some discussion, Commission Chair Grant obtained a consensus to reserve the issue for the Personnel and Budget Committee and stated that the item would be continued to the January 11 meeting for further discussion and/or possible action.

**VII. Referral to Personnel and Budget Committee of Review of Staff Salaries.**

Mr. Lynn said that although the Mayor has advised that he will not entertain any departmental requests for budgetary enhancements, Mr. Lynn believes a review of staff salaries is warranted.

Mr. Lynn explained that due to historical reasons, the Commission's professional staff salaries (those of the Deputy Executive Director, the Whistleblower/Educator, and the Campaign Finance

Auditor) are much lower than comparable positions in other departments. He reported that when the Commission was first formed in 1994, it was given a budget for only three or four staff members whose job functions were undefined. Jane Rubin, the Commission's former Executive Director, informed Mr. Lynn that the original classifications were set without the benefit of assigned duties. Mr. Lynn said that the Commission now has a better sense of the duties for each of the positions, and he recommended that the Commission consider staff salary reclassification at this time.

Commissioner Dockendorff requested a comparison of the staff salaries at the Los Angeles Ethics Commission.

Commission Vice-Chair Henri E. Norris invited Leirion Gaylor of the Mayor's Office to comment on this matter. Ms. Gaylor stated that the Mayor's Office does not consider salaries of other agencies or departments when determining whether to grant staff upgrades or reclassifications. She said that the current Deputy Executive Director's position was upgraded last year, and that the Campaign Finance Auditor's position was created recently through last year's supplemental budget. She added that the Mayor would like the Commission to produce at least one audit report before any new classification is set for the Campaign Finance Auditor position. Ms. Gaylor said it was not clear that the Commission's workload has changed. She said that it appears that the duties of the persons in these positions may have shifted. For this reason, Ms. Gaylor stated that there is no need to adjust staff salaries. She also noted that one of the reclassified positions was left vacant last year shortly after the reclassification took place.

Responding to an inquiry from Commissioner Kinglsey as to what prompted Mr. Lynn's review of this matter, Mr. Lynn explained that the Department of Human Resources had requested that the Commission reclassify the Campaign Finance Auditor position. He said that in his review of that position, he discovered that the salary for the Commission's auditor position was much lower than that of other auditors in the City. He also stated that law clerks without a legal education, which Ms. Starkman and Ms. Ahn both possess, were receiving higher salaries than Ms. Starkman and Ms. Ahn.

Commissioner Kingsley noted that it was important for the Commission to retain such highly skilled and competent staff. She stated that the Commission believes staff is dedicated and that it is important that they be compensated fairly and adequately in relation to other City departments. The Commissioners expressed their agreement with Commissioner Kingsley's sentiment.

Commission Chair Grant disagreed with Ms. Gaylor's view that the Commission's workload has not increased. She stated that the Commission's workload has increased considerably with the addition of new mandates, including the administration of the Campaign Consultant Ordinance, which the Commission received no new resources to administer.

Commissioner Paul H. Melbostad suggested that Mr. Lynn's position (Campaign Finance Officer/Office Manager) might also need to be reclassified at some point, as his present duties encompass policy review and computer/technical assistance, in addition to administrative functions.

Commission Vice-Chair Norris stated that as the Mayor's appointee, she is interested in achieving balance and reconciling this issue with the Mayor's office. She noted her participation in negotiations with the Mayor last year to obtain reclassification of one staff position. She asked Ms. Gaylor if she was at all persuaded by the foregoing discussion.

Ms. Gaylor stated that although she was sympathetic to the staff, the Mayor's Office is not anticipating a surplus. She said that if the Commission found areas to reduce its budget, then the Mayor's office might be open to discussing staff salaries. Otherwise, she stated, she had not heard any arguments to change her opinion of the matter.

**VIII. Discussion and Possible Action: Possible Reconsideration of proposed Ordinance prohibiting false endorsements in campaign literature, based on recommendations made by Supervisor Ammiano.**

Commissioner Melbostad led the discussion about the proposed Ordinance prohibiting false endorsements in campaign literature. The Commission reconsidered its proposal at the request of Supervisor Ammiano, who had met with staff on November 19 and had suggested several changes. His suggestions were based in part on the Legislative Analyst's report. The Commission expressed support for some but not all of Supervisor Ammiano's suggestions, as described below.

- The original proposal prohibits the transmission of false endorsements on printed materials. Supervisor Ammiano expressed interest in the Legislative Analyst's recommendation to broaden the proposed ordinance to include other forms of media, such as "letter[s], radio advertisement[s], television advertisement[s], coordinated telephone solicitation[s], Internet site[s] or advertisement[s] or any other form of advertisement[s]...."

  At today's meeting, the Commission expressed support for the idea of broadening the proposed ordinance to include other forms of media, subject to the City Attorney's review of the legal issues raised by this recommendation.

- The original proposal prohibits the use of photographs that imply a false endorsement. Supervisor Ammiano expressed concern that this prohibition may be difficult to enforce because it requires a subjective judgment. He agreed with the Legislative Analyst that use of a "head shot" of one person objectively implies an endorsement, whereas use of a group photograph requires a subjective judgment to determine whether an endorsement is implied.

  At today's meeting, the Commission respectfully disagreed with this recommendation, which would significantly narrow the scope of the proposed ordinance. It is the view of the Commission that the use of head shots, as well as group photographs, require subjective judgment by the enforcement authority.

- Supervisor Ammiano suggested that organizations that do not want their names included on campaign literature for the purpose of endorsement could voluntarily provide the Commission this information. The Commission could then post the list of such organizations on its website.

  The Commission agreed in principle with this recommendation.

- Supervisor Ammiano suggested adding an additional penalty if producers of campaign literature who also contract with the City violate the ordinance. He recommended that the City immediately terminate their existing contracts and bar them from receiving new City contracts for a period of one year.

  The Commission took no position on this recommendation.

- Supervisor Ammiano suggested adding a requirement that complaints alleging false endorsements be resolved within 30 days.

The Commission expressed support for expediting review of complaints alleging false endorsements. However, a Charter amendment is needed in order to require expedited review of any complaints. Rather than pursuing amendment of the Charter, the Commission directed staff to give complaints alleging false endorsements the highest priority.

**IX. Discussion and Possible Action: Review of Process for Selecting Committees for Audit.**

Commissioner Dockendorff stated that he would prefer auditing ballot measure committees representing both sides of an issue and candidates running for the same office. Commissioner Melbostad said the most important factor in selecting auditees should be the amounts of money involved in a campaign.

Campaign Finance Auditor Shaista Shaikh reported that staff had discussed both Commissioner Dockendorff and Commissioner Melbostad's ideas. She then proposed the following possibilities for the Commission's consideration. She stated that it would be possible to audit both the "pro" and "con" committees of a ballot measure and still allow the committees to be randomly selected. This could be accomplished by first randomly selecting a ballot measure letter and then auditing the committees supporting/opposing it. She also stated that an office could be randomly selected and then all the candidates running for that office could be audited. Ms. Shaikh and the Commissioners discussed the possibility of auditing committees with various spending/fund-raising levels by randomly selecting a percentage from each level. In that case, all committees and candidates would be subject to an audit regardless of their size.

Mr. Pilpel suggested that no committees that raise or spend below the current $1,000 threshold be audited because of limited staff resources. He recommended auditing only those in the middle range, i.e., those spending/raising $50,000.

After some discussion, the Commissioners agreed that all committees regardless of size should be subject to the random selection process for auditing. The Commission also agreed that committees formed for the purpose of supporting issues and/or offices should subject to the random selection process.

In response to a question from Commission Chair Grant, Deputy City Attorney Julie Moll stated that the Commission could randomly re-select auditees with no activity if the audit manual so provided.

Commission Chair Grant noted that guidelines are needed and requested that staff prepare a status report for the May 1999 agenda or an earlier agenda, if possible.

**X. General Discussion Re: Whether existing laws are adequate to address the types of conduct at issue in complaints; whether local laws should be amended to address conduct not currently covered by those laws; and how the complaint process can be made more effective.**

**1. How the complaint process can be made more effective**

**1. Discussion and Possible Action: Approval of proposed revised Complaint**

Ms. Starkman highlighted the changes in the proposed revised complaint form clarifying which laws the Commission can and cannot enforce, and those matters over which the Commission has jurisdiction to investigate. She also noted a new item encouraging persons to participate in an intake interview with a Commission investigator before filing a complaint. The purpose of this meeting would allow investigators to gather necessary information and evidence and dissuade persons from filing complaints unsupported by evidence. Such meetings would also educate complainants about the specific laws they believe may have been violated.

Commissioner Dockendorff asked staff how the new complaint form and interview process would accommodate those who wished to file anonymous complaints. Ms. Starkman explained that anonymous complainants could contact the investigators by telephone as indicated at the top of the complaint form. Ms. Moll added that staff would continue to maintain the Whistleblower Hotline for receipt of anonymous complaints.

There was some discussion as to whether the complaint form should provide an "other" check-off category to indicate additional laws that complainants believe were violated. Commissioner Dockendorff expressed concern that such an option might encourage persons to file complaints with no basis in law over which the Commission has jurisdiction. Ms. Moll explained that complainants could learn what laws (if any) applied by meeting with the investigators. She added that if the complainant checked the "other" category and the matter was not within the Commission's jurisdiction, staff would be able to refer the person to the appropriate agency.

Commission Vice-Chair Norris noted that the staff spends much of its resources serving as an intake office for other agencies by referring complaints to other departments. She stated that this service should be reflected in the budget process.

Commissioner Melbostad suggested clarifying the term "campaign activities" on the complaint form by adding "limited to violations of the local campaign laws." He stressed that the complaint form should clearly state that the Commission does not have jurisdiction to enforce provisions of the State Elections Code. Staff pointed out that the instructions accompanying the proposed complaint form contain this advice.

There was some discussion as to the length and format of the confidential complaint reports prepared by the staff for the Commission members, and discussion as to general problems with complaints received by the Commission that could not be addressed in the complaint form.

Commission Vice-Chair Norris recommended that the second paragraph on page 1 of the complaint form instructions precede the first paragraph. Mr. Pilpel suggested inserting the terms "contact or" on page 2 of the instructions to reflect Commissioner Dockendorff's suggestion regarding the filing of anonymous complaints.

**Motion 98-12-14-55 (Norris/Kingsley) Moved, seconded and passed: That the Commission adopt the proposed Complaint Form and Instructions as amended.**

Commission Chair Grant next discussed the list of the Commission's Initiatives identified by the Commission and Staff. At Ms. Starkman's suggestion, the Commissioners agreed to postpone discussion of this item until the next Commission meeting scheduled for January 11, 1999. Ms. Starkman also suggested that the Commissioners review the list and identify a list of their own top five items for discussion. It was suggested that staff also review the list of initiatives and select those items it deems to be most important. Commissioner Melbostad requested that the

Commissioners send their lists to the staff by Thursday, January 7, 1999.

**XI. Discussion and Vote pursuant to Sunshine Ordinance section 67.11(a) as to whether to conduct a closed session.**

**Motion 98-12-14-56 (Norris/Dockendorff) Moved, seconded and passed: That the Commission conduct a closed session in order to discuss pending litigation.**

**XII. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.11 to discuss pending litigation.**

The Commissioners conducted a closed session regarding a complaint pending with the Ethics Commission.

**XIII. Discussion and vote as to whether to disclose deliberations conducted in closed session.**

At the conclusion of the closed session, the following motion was approved unanimously:

**Motion 98-12-14-57: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

**XIV. Discussion and Possible Action Re: Items for Future Agendas.**

There were no items requested for future agendas.

**XV. Public Comment on items appearing or not appearing on the Agenda that are within the jurisdiction of the Ethics Commission**

There was no public comment.

**XVI. Adjournment**

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

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Peggy Ahn, Whistleblower/Educator

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